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DOCUMENTS ILLUSTRATIVE

OF

INTERNATIONAL LAW

BY

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PREFACE

THERE are in existence several books of cases, dealing with the Law of Nations as a whole or with separate parts of it. Most of them are excellent, and nothing was further from my thoughts in compiling the present work than to enter into competition with them. What I have endeavoured to do is to produce a book which shall contain, not merely judgments and opinions given in connection with disputes brought before Courts for settlement, but documents of all kinds which bear on the formation and development of the rules of International Law.

The student reads in his text-books that certain authors who wrote some three centuries ago made such a deep impression on the collective mind of Western Europe that the principles most of them advocated became the foundations of a science of international relations unlike anything that had gone before it, though borrowing much from previously existing theories and institutions. I have given him extracts from some of the most distinguished of these writers, that he may see for himself how, and against what, they reasoned. He also reads that in modern times states have begun to settle for themselves by common agreement what rules they will obey in many departments of their mutual intercourse. I have placed before him all the great law-making documents in which these agreements are recorded. Further, he learns that in the interval between the great Jurists who watched over and controlled the infancy of International Law, and the great Conferences which have moulded its newest activities, treaties, judgments of prize-courts and arbitral tribunals, state-papers of all kinds, and even the opinions of private persons or associations of persons, influenced its development, and are likely still to do so, some of them in a more marked degree than before. I have given him specimens of all these to study.

The proposition that students are likely to derive much benefit from familiarity with a selection of such documents as

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I have indicated is hardly likely to be controverted. But I am acutely conscious of the difficulty of making a selection which will be generally satisfactory. There can be no doubt about the inclusion of the Hague Conventions and other great law-making documents of recent times. But when we step beyond these, what principle is to guide our choice? In a case book the general opinion of the legal profession enables a compiler to distinguish between the more important and the less important judgments. But there is no such *consensus* to appeal to in the case of ordinary treaties and other state-papers. They form an enormous literature, which no one man can know, still less sift and weigh. And when, in addition to them, speeches of statesmen, writings of publicists, and transactions of societies have to be considered, it is clear that the selection from this mass of material of enough to fill a modest book of reference must be more a matter for unfettered individual judgment than for regulation by standardized tests. I could but choose according to my knowledge. But my sense of its limitations was greatly deepened as I went on. Within its boundaries I have taken by preference modern instances; and in arranging them I have followed the order adopted in my *Principles of International Law*. It was impossible to illustrate every part of the subject. In settling the points to be elucidated I was guided largely by my judgment as to what were likely to be most important in the immediate future, though doubtless I have laid stress almost unconsciously on the questions which interest me most. The selection, for instance, of what may possibly be regarded as a somewhat disproportionate number of documents in connection with the attempts to pierce the Isthmus of Panama, the Monroe Doctrine, and the position of the United States among the American Republics, was due in the first place to a conviction, which all share, of the vast importance of the questions raised by completion of the Panama Canal, but in a secondary degree to the intense interest I have long taken in the gradual evolution of something like social organization in the family of nations. Those whose judgments and predilections are altogether different would naturally have made a differ-

ent selection. I can only hope that mine may meet the needs of those for whom it was undertaken.

The book is intended for British and American students, and therefore dwells most on questions which concern them most intimately. It is divided into four Parts. The first deals with the nature, origin, and development of International Law, the second with questions arising out of the peaceful relations of states, the third with belligerency, and the fourth with neutrality. Clearly it is possible for a document to cover matters connected with more than one of these departments. Thus it comes about that what appears in one Part may often be used to elucidate questions which arise properly in connection with another Part. A case in point occurs in Part I where I reprint part of a judgment by Sir William Scott in order to point out the way in which Prize Court Judges may, and should, act as exponents of International Law in the process of deciding the case actually before them at the time. But the same extract will serve equally well to illustrate the nature and functions of Prize Courts, a question which falls properly into Part III. Similar instances occur frequently; and a careful teacher will direct the attention of his students to them. It will be found that the book can be used with any good modern treatise on International Law. I have inserted elucidatory notes at the end of many of the documents, but they cannot be regarded as substitutes for a systematic exposition of the subject.

I have laid a great variety of sources under contribution for my subject matter. The extracts from Machiavelli are taken from the piquant translation of *The Prince*, published in 1674, by Edward Dacres. The English version of Pufendorff is that of Basil Kennett, dated 1706, and the quotations from Vattell come from a translation of 1793. Whewell's translation of 1853 has been used in all but one of the extracts from Grotius. Many of the treaties and state-papers I have used have been printed and reprinted so often that it is superfluous to say from what publications I took them. Where the source is in any way special I have acknowledged it at the end of the document. But it is proper to add that the publications of the British

government have been used much more frequently than any others. I am indebted to the Controller of His Majesty's Stationery Office for permission to reproduce them. To him, and to the Foreign Office, I offer my sincere thanks.

I have also to express my gratitude to the International Law Association for allowing me to reprint the comprehensive report presented by their Committee on Aviation in 1913, and to the Syndics of the Cambridge University Press for leave to use Doctor Whewell's translation of the great work of Hugo Grotius, *De Jure Belli ac Pacis*. My cordial thanks are hereby rendered to Doctor James Brown Scott, the distinguished Secretary of the Carnegie Endowment for International Peace and Director of its International Law Division, for permission to take a few reports from his valuable collection of *Cases on International Law*, and to reprint various treaties and other documents from *The American Journal of Internation Law*, of which he is Editor-in-Chief. Doctor John Bassett Moore, Hamilton Fish Professor of International Law and Diplomacy at Columbia University, New York, has kindly allowed me to transfer to my own pages several extracts from his *International Law Digest*, and I wish to express to him my gratitude for the permission to use such a monument of American industry and scholarship. In preparing the present collection for the press I have received much help from Mr. E. J. Passent, M.A., of Downing College, Cambridge, whose careful research enabled me to find documents I should otherwise have missed. I wish to express my sense of obligation to him for his assistance, and to my friend, Doctor Courtney Stanhope Kenny, Professor of English Law in the University of Cambridge, for valuable advice given to me out of the treasures of his wisdom and experience

T. J. LAWRENCE.

Upton Lovel Rectory, England,
July 28, 1914.

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DOCUMENTS ILLUSTRATIVE OF INTERNATIONAL LAW

PART I

DOCUMENTS ILLUSTRATING THE NATURE, ORIGIN, AND DEVELOPMENT OF INTERNATIONAL LAW

1. Excerpts from Nicolo Machiavelli, 1469–1527

Calculated Cruelty

From whence it is to be observed, that he who usurps the government of any State is to execute and put in practice all the cruelties which he thinks material at once, that he may have no occasion to renew them often, but that by his discontinuance he may mollify the people, and by his benefits bring them over to his side. He who does otherwise, whether for fear or ill counsel, is obliged to be always ready with his knife in his hand; for he can never repose any confidence in his subjects, whilst they, by reason of his fresh and continued inhumanities, cannot be secure against him. So then injuries are to be committed all at once, that the last being the less, the distaste may be likewise the less; but benefits should be distilled by drops, that the relish may be greater. — (*The Prince,* ch. viii.)

War

A Prince, then, is to have no other design, nor thought, nor study but war and the arts and disciplines of it; for, indeed, that is the only profession worthy of a prince, and is of so much

importance that it not only preserves those who are born princes in their patrimonies, but advances men of private condition to that honourable degree. — (*The Prince*, ch. xiv.)

Opportune Lack of Moral Principle

A tender man, and one that desires to be honest in everything, must needs run a great hazard among so many of a contrary principle. Wherefore it is necessary for a prince who is willing to subsist to harden himself, and learn to be good or otherwise according to the exigence of his affairs. . . . No man, I am sure, will deny but that it would be an admirable thing and highly to be commended to have a prince endued with all good qualities; but because it is impossible to have, much less to exercise, them all by reason of the frailty and crossness of our nature, it is convenient that he be so well instructed as to know how to avoid the scandal of those vices which may deprive him of his state, and be very cautious of the rest, though their consequence be not so pernicious, but where they are unavoidable he need trouble himself the less. Again, he is not to concern himself if run under the infamy of those vices without which his dominion was not to be preserved; for if we consider things impartially we shall find some things in appearance are virtuous, and yet, if pursued, would bring certain destruction; and others, on the contrary, that are seemingly bad, which, if followed by a prince, procure his peace and security. — (*The Prince*, ch. xv.)

The Value of Bloodshed and Fear

I say every prince is to desire to be esteemed rather merciful than cruel, but with great caution that his mercy be not abused; Caesar Borgia was counted cruel, yet that cruelty reduced Romagna, united it, settled it in peace, and rendered it faithful: so that if well considered, he will appear much more merciful than the Florentines, who rather than be thought cruel suffered Pistoia to be destroyed. A prince, therefore, is not to regard the scandal of being cruel, if thereby he keeps his subjects in their allegiance and united. . . . Nevertheless, he

is not to be too credulous of reports, too hasty in his motions, nor create fears and jealousies to himself, but so to temper his administrations with prudence and humanity that neither too much confidence may make him careless, nor too much diffidence intolerable. And from hence arises a new question, Whether it be better to be beloved than feared, or feared than beloved? It is answered both would be convenient, but because that is hard to attain, it is better and more secure, if one must be wanting, to be feared than beloved. . . . I conclude, therefore, according to what I have said about being feared or beloved, that forasmuch as men do love at their own discretion, but fear at their prince's, a wise prince is obliged to lay foundation upon that which is in his power, not that which depends on other people, but, as I said before, with great caution that he does not make himself odious. — (*The Prince*, ch. xvii.)

The Use of Dissimulation

How honourable it is for a prince to keep his word, and act rather with integrity than collusion, I suppose everybody understands: nevertheless, experience has shown in our times that those princes who have not pinned themselves up to that punctuality and preciseness have done great things, and by their cunning and subtilty not only circumvented, and darted the brains of those with whom they had to deal, but have overcome and been too hard for those who have been so superstitiously exact. For further explanation you must understand there are two ways of contending, by law and by force: the first is proper to men; the second to beasts; but because many times the first is insufficient, recourse must be had to the second. It belongs, therefore, to a prince to understand both, when to make use of the rational and when of the brutal way. . . . A prince, therefore, who is wise and prudent, cannot or ought not to keep his parole, when the keeping of it is to his prejudice, and the causes for which he promised removed. Were men all good this doctrine was not to be taught, but because they are wicked and not likely to be punctual with you, you are not obliged to any such strictness with them; nor was there ever any prince that

wanted lawful pretence to justify his breach of promise. I might instance in many modern examples, and show how many confederations, and peaces, and promises have been broken by the infidelity of princes, and how he that best personated the fox had the better success. Nevertheless, it is of great consequence to disguise your inclination, and to play the hypocrite well; and men are so simple in their temper and so submissive to their present necessities, that he that is neat and cleanly in his collusions shall never want people to practise them upon. I cannot forbear one example which is still fresh in our memory. Alexander VI never did, nor thought of, anything but cheating, and never wanted matter to work upon; and though no man promised a thing with greater asseveration, nor confirmed it with more oaths and imprecations, and observed them less, yet understanding the world well he never miscarried.

A prince, therefore, is not obliged to have all the fore-mentioned good qualities in reality, but it is necessary he have them in appearance; nay, I will be bold to affirm that, having them actually, and employing them upon all occasions, they are extremely prejudicial, whereas, having them only in appearance, they turn to better account; it is honourable to seem mild, and merciful, and courteous, and religious, and sincere, and indeed to be so, provided your mind be so rectified and prepared that you can act quite contrary upon occasion. And this must be premised, that a prince, especially if come but lately to the throne, cannot observe all those things exactly which make men be esteemed virtuous, being oftentimes necessitated, for the preservation of his State, to do things inhuman, uncharitable, and irreligious; and, therefore, it is convenient his mind be at his command, and flexible to all the puffs and variations of fortune; not forbearing to be good whilst it is in his choice, but knowing how to be evil when there is a necessity. A prince, then, is to have particular care that nothing falls from his mouth but what is full of the five qualities aforesaid, and that to see and to hear him he appears all goodness, integrity, humanity, and religion, which last he ought to pretend to more than ordinarily, because more men do judge by the eye than by the

touch; for everybody sees but few understand; everybody sees how you appear, but few know what in reality you are, and those few dare not oppose the opinion of the multitude, who have the majesty of their prince to defend them; and in the actions of all men, especially princes, where no man has power to judge, everyone looks to the end. Let a prince, therefore, do what he can to preserve his life, and continue his supremacy, the means which he uses shall be thought honourable, and be commended by everybody; because the people are always taken with the appearance and event of things and the greatest part of the world consists of the people; those few who are wise taking place when the multitude has nothing else to rely upon. There is a prince at this time in being (but his name I shall conceal) who has nothing in his mouth but fidelity and peace; and yet had he exercised either the one or the other, they had robbed him before this both of his power and reputation. — (*The Prince*, ch. xviii.)

2. Excerpts from Hugo Grotius, 1583–1645

The Reality of International Law

The Civil Law, both that of Rome, and that of each nation in particular, has been treated of, with a view either to illustrate it or to present it in a compendious form, by many. But International Law, that which regards the mutual relations of several Peoples, or Rulers of Peoples, whether it proceed from nature, or be instituted by divine command, or introduced by custom and tacit compact, has been touched on by few, and has been by no one treated as a whole in an orderly manner. And yet that this be done, concerns the human race. . . .

And such a work is the more necessary on this account; that there are not wanting persons in our own time, and there have been also in former times persons, who have despised what has been done in this province of jurisprudence, so far as to hold that no such thing existed, except as a mere name. Every one can quote the saying of Euphemius in Thucydides;—that for a king or a city which has an empire to maintain, nothing is

unjust which is useful: and to the same effect is the saying, that for those who have supreme power, the equity is where the strength is: and that other, that state affairs cannot be carried on without doing some wrong. — (*De Jure Belli ac Pacis*, Prolegomena.)

The Need of International Law

I, for the reasons which I have stated, holding it to be most certain that there is among nations a common law of Rights which is of force with regard to war, and in war, saw many and grave causes why I should write a work on that subject. For I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint. — (*De Jure Belli ac Pacis*, Prolegomena.)

An Attempt to set up a Law of Nature or Natural Law

It remains now that I briefly explain with what aids, and with what care, I undertook this work. In the first place, it was my object to refer the truth of the things which belong to Natural Law to some notions, so certain, that no one can deny them, without doing violence to his own nature. For the principles of such Natural Law, if you attend to them rightly, are of themselves patent and evident, almost in the same way as things which are perceived by the external senses; which do not deceive us, if the organs are rightly disposed, and if other things necessary are not wanting. Therefore Euripides in his *Phœnissæ* makes Polynices, whose cause he would have to be represented manifestly just, express himself thus: —

> I speak not things hard to be understood,
> But such as, founded on the rules of good
> And just, are known alike to learn'd and rude.

And he immediately adds the judgment of the chorus, (which consisted of women, and these too barbarians,) approving what he said.

In order to give proofs on questions respecting this Natural Law, I have made use of the testimonies of philosophers, historians, poets, and finally orators. Not that I regard these as judges from whose decision there is no appeal: for they are warped by their party, their argument, their cause: but I quote them as witnesses whose conspiring testimony, proceeding from innumerable different times and places, must be referred to some universal cause; which, in the questions with which we are here concerned, can be no other than a right deduction proceeding from the principles of reason, or some common consent. The former cause of agreement points to the Law of Nature; the latter, to the Law of Nations: though the difference of these two is not to be collected from the testimonies themselves, (for writers everywhere confound the Law of Nature and the Law of Nations,) but from the quality of the matter. For what cannot be deduced from certain principles by solid reasoning, and yet is seen and observed everywhere, must have its origin from the will and consent of all. — (*De Jure Belli ac Pacis*, Prolegomena.)

An Account of the So-called Natural Law

Natural Law is the Dictate of Right Reason, indicating that any act, from its agreement or disagreement with the rational nature has in it a moral turpitude or a moral necessity; and consequently that such act is forbidden or commanded by God, the author of nature.

Acts concerning which there is such a Dictate, are obligatory, or are unlawful, in themselves, and are therefore understood as necessarily commanded or forbidden by God; and in this character, Natural Law differs, not only from Human Law, but from Positive Divine Law, which does not forbid or command acts which, in themselves and by their own nature, are either obligatory or unlawful; but, by forbidding

them makes them unlawful, by commanding them makes them obligatory. . . .

Natural Law is so immutable that it cannot be changed by God himself. For though the power of God be immense, there are some things to which it does not extend: because if we speak of those things being done, the words are mere words, and have no meaning, being self-contradictory. Thus God himself cannot make twice two not be four; and in like manner, He cannot make that which is intrinsically bad, not be bad. For as the essence of things, when they exist, and by which they exist, does not depend on anything else, so is it with the properties which follow that essence: and such a property is the baseness of certain actions, when compared with the nature of rational beings. And God himself allows himself to be judged of by this rule. . . .

That there is such a thing as Natural Law, is commonly proved both *a priori* and *a posteriori;* the former the more subtle, the latter, the more popular proof. It is proved *a priori* by shewing the agreement or disagreement of anything with the rational and social nature of man. It is proved *a posteriori* when by certain or very probable accounts we find anything accepted as Natural Law among all nations, or at least the more civilized. For a universal effect requires a universal cause: now such a universal belief can hardly have any cause except the common sense of mankind. — (*De Jure Belli ac Pacis,* Bk. I, ch. i, §§ 10, 12.)

An Account of Positive Law

Another species of Law is Positive (Instituted or Voluntary) Law, which derives its origin from will and is either human or Divine. Human Positive Law includes Civil Law, which proceeds from the power of the state, the Law of Nations, which receives its binding force from the will of all nations or of many, and Law which does not emanate from the power of the state though subject to it, such as the commands of a father or a master.

Divine Positive (Instituted or Voluntary) Law originates from the Divine will in such a way that God does not will it because it is just, but it is just because God wills it. This Law is given either to the whole human race or to one people. To the whole human race we find Law was thrice given by God — at the creation, after the flood, and through Christ. These three Laws bind all men as knowledge of them is acquired. To the Hebrew people God gave a Law peculiar to themselves, which therefore does not bind other peoples. — (*De Jure Belli ac Pacis*, Bk. I, ch. i, §§ 13–16, condensed and to some extent paraphrased.)

3. Excerpts from Samuel Pufendorff, 1632–1694

Natural Law and its Claims

It follows that we make enquiry into that most general and universal rule of human action, to which every man is obliged to conform, as he is a reasonable creature. To this rule custom hath given the name of Natural Law, and we may call it likewise the Law Universal or Perpetual, the former in regard that it binds the whole body of the human race, the latter because it is not subject to change, which is the disadvantage of Positive Laws. — (*De Jure Naturæ et Gentium*, Bk. II, ch. iii, § 1.)

Natural Law Sufficient for Nations: No Positive Law Needed by Them

There is still one question behind which requires our determination, whether or no there be any such thing as a particular and positive Law of Nations, contradistinct to the Law of Nature. Learned men are not come to any good agreement on this point. Many assert the Law of Nature and the Law of Nations to be the very same thing, differing no otherwise than in external denomination. Thus Hobbes divides Natural Law into the Natural Law of Men and the Natural Law of States, commonly called the Law of Nations. He observes that "the precepts of both are the same; but forasmuch as States when they are once instituted assume the personal properties of men,

hence it comes to pass that what, speaking of the duty of particular men, we call the Law of Nature, the same we term the Law of Nations, when we apply it to whole States, Nations, or Peoples." This opinion we for our part readily subscribe to. Nor do we conceive that there is any other voluntary or Positive Law of Nations properly invested with a true and legal force and obliging as the ordinance of a superior power. — (*De Jure Naturæ et Gentium*, Bk. II, ch. iii, § 23.)

4. Excerpts from Emerich de Vattel, 1714–1767

The Natural or Necessary Law of Nations

Nations being composed of men naturally free and independent, and who, before the establishment of civil societies, lived together in the state of nature, nations, or sovereign states, are to be considered as so many free persons living together in the state of nature.

It is evident from the Law of Nature, that all men being naturally free and independent, they cannot lose these blessings without their own consent. Citizens cannot enjoy them fully and absolutely in any state, because they have surrendered a part of these privileges to the sovereign. But the body of the nation, the state, remains absolutely free and independent with respect to all men, or to foreign nations, while it does not voluntarily submit to them.

Men being subject to the Laws of Nature, and their union in civil society not being sufficient to free them from the obligation of observing these laws, since by this union they do not cease to be men; the entire nation, whose common will is only the result of the united wills of the citizens, remains subject to the Laws of Nature, and is obliged to respect them in all its proceedings. And since the law arises from the obligation, the nation has also the same laws that nature has given to men, for the performance of their duty.

We must then apply to nations the rules of the Law of Nature in order to discover what are their obligations, and what are their laws; consequently the Law of Nations is originally no

more than the Law of Nature applied to nations. But as the application of a rule cannot be just and reasonable, if it be not made in a manner suitable to the subject; we are not to believe that the Law of Nations is precisely, and in every case, the same as the Law of Nature, the subjects of them only excepted; so that we need only substitute nations for individuals. A state of civil society is a subject very different from an individual of a human race; whence, in many cases, there follow, in virtue of the Law of Nations themselves, very different obligations and rights; for the same general rule applied to two subjects cannot produce the same decisions, when the subjects are different; since a particular rule that is very just with respect to one subject, is not applicable to another subject of a very different nature. There are then many cases in which the Law of Nature does not determine between state and state, as it would between man and man. We must therefore know how to accommodate the application of it to different subjects; and it is the art of applying it with a justness founded on right reason, that renders the Law of Nations a distinct science.

We call that the Necessary Law of Nations that consists in the application of the Law of Nature to nations. It is necessary, because nations are absolutely obliged to observe it. This Law contains the precepts, prescribed by the Law of Nature to states, to whom that Law is not less obligatory than to individuals; because states are composed of men, their resolutions are taken by men, and the Law of Nature is obligatory to all men, under whatever relation they act. This is the Law which Grotius, and those who follow him, call the Internal Law of Nations, on account of its being obligatory to nations in point of conscience. Several term it the Natural Law of Nations.

Since then the Necessary Law of Nations consists in the application of the Law of Nature to states, and is immutable, as being founded on the nature of things, and in particular on the nature of man; it follows, that the Necessary Law of Nations is immutable.

Whence, as this Law is immutable, and the obligations that arise from it necessary and indispensible; nations can neither

make any changes in it by their conventions, dispense with it themselves, nor reciprocally, with respect to each other.

This is the principle by which we may distinguish lawful conventions or treaties, from those that are not lawful; and innocent and rational customs from those that are unjust and censurable.

There are things just, and permitted by the Necessary Law of Nations, which states may agree to establish between each other, and which they may consecrate and strengthen by manners and customs. There are also those that are indifferent, which different states may agree to establish at pleasure by treaties, or introduce such custom or such practice as they shall think proper. But all the treaties and all the customs contrary to what the Necessary Law of Nations prescribes, or that are such as it forbids, are unlawful. We shall hereafter find that they are not always such as are agreeable to the Internal Law of Nature or of conscience, and that for reasons which shall be given in their proper place, these conventions, or these treaties, are only valid by the external law. Nations being free and independent, though the actions of one of them are illegal and are condemned by the Law of conscience, the others are obliged to bear with them, when those actions do not injure their perfect rights. The liberty of one nation will not remain entire, if the others arrogate to themselves an inspection into the rules of its conduct. For this must be contrary to the Law of Nature, which declares every nation free and independent of others. — (*Droit des Gens*, Preliminaires.)

The Positive Law of Nations

Nations being free, independent, and equal, and having a right to judge according to the dictates of conscience, of what is to be done in order to fulfil its duties; the effect of all this is, the producing, at least externally, and among men, a perfect equality of rights between nations, in the administration of their affairs, and the pursuit of their pretensions, without regard to the intrinsic justice of their conduct, of which others

have no right to inform a definitive judgment; so that what is permitted in one, is also permitted in the other, and they ought to be considered in human society as having an equal right.

Every one in fact pretends to have justice on his side in the differences that may arise, and neither one nor the other ought to interest itself in forming a judgment of the disputes of other nations. The nation that has acted wrong, has offended against its conscience; but as it may do whatever it has a right to perform, it cannot be accused of violating the laws of society.

It is therefore necessary, on many occasions that nations should suffer certain things to be done, that are very unjust and blameable in their own nature, because they cannot oppose it by open force, without violating the liberty of some particular state, and destroying the foundation of natural society. And since they are obliged to cultivate that society, it is rightly presumed, that all nations have consented to the principle we have just established. The rules that flow from this principle, form what Wolfe calls the Voluntary Law of Nations; and nothing prevents our using the same term, though we have imagined that we ought to deviate from that great man in our manner of establishing the foundation of those laws.

The laws of natural society are of such importance to the safety of all states, that if they accustom themselves to trample them under their feet, no people can flatter themselves with the hopes of self-preservation, and of enjoying tranquillity at home, whatever wise, just, and moderate measures they may pursue. Now all men and all states have a perfect right to those things that are necessary for their preservation; since this right is equivalent to an indispensible obligation. All nations have then a right to repel by force what openly violates the laws of the society which nature has established among them, or that directly attacks the welfare and safety of that society.

But care must be taken not to extend this law to the prejudice of the liberty of nations. All are free and independent, but obliged to preserve the laws of society, which nature has established among them; and so far obliged, that others have a

right to repress that which violates these laws; all together have not therefore any authority over the conduct of any one, farther than the interest of the natural society is concerned. The general and common Law of Nations, with respect to the conduct of all sovereign states, ought to be measured by the end of the association that subsists between them.

The several engagements into which nations may enter, produce a new kind of the Law of Nations, called conventional, or of treaties. As it is evident that a treaty binds only the contracting parties, the Conventional Law of Nations is not an universal but a particular law. All that can be done on this subject in a treatise on the Law of Nations, is therefore to give the general rules that ought to be observed by nations in relation to their treaties. The particulars of the different agreements relates to what passes between certain nations; but the law and the obligations resulting from it, is matter of fact, and belongs to history.

Certain maxims and customs consecrated by long use, and observed by nations between each other as a kind of law, form the Customary Law of Nations, or the custom of nations. This Law is founded on a tacit consent, or if you will, on a tacit convention of the nations that observe it with respect to each other. Whence it appears, that it is only binding to those nations that have adopted it, and that it is not universal, any more than Conventional Laws. It must be here also observed of this Customary Law, that the particulars relating to it, do not belong to a systematic treatise on the Law of Nations, but that we ought to confine ourselves to the giving a general theory of it; that is, to the rules which here ought to be observed, as well with respect to its effects, as in relation to the matter itself; and in this last respect, these rules will serve to distinguish the lawful and innocent customs from those that are unjust and illegal.

When a custom is generally established, either between all the polite nations in the world, or only between those of a certain continent, as of Europe, for example, or those who have a more frequent correspondence; if that custom is in its own

nature indifferent, and much more if it be a wise and useful one, it ought to be obligatory to all those nations who are considered as having given their consent to it. And they are bound to observe it with respect to each other, while they have not expressly declared that they will not adhere to it. But if that custom contains anything unjust or illegal, it is of no force; and every nation is under an obligation to abandon it, nothing being able to oblige or permit a nation to violate a Natural Law.

These three kinds of the Law of Nations, Voluntary, Conventional, and Customary, together compose the Positive Law of Nations. For they all proceed from the volition of nations; the Voluntary Law, from their presumed consent; the Conventional Law, from an express consent; and the Customary Law, from a tacit consent; and as there can be no other manner of deducing any law from the will of nations, there are only these three kinds of the Positive Law of Nations.

We have carefully distinguished from them the Natural or Necessary Law of Nations; without, however, treating of them separately. But after having established, with respect to each what the Law necessarily prescribes, we shall at length add, how and in what manner the decisions of the Voluntary Law ought to be modified, or, which is the same thing, in other terms, we shall explain, how, in virtue of the liberty of nations, and the rules of natural society, the External Law that ought to be observed among them, differs in certain instances from the maxims of the Internal Law, which is always obligatory with respect to conscience. As to the laws introduced by treaties, or by custom, there is no room to fear that any one will confound them with the Natural Law of Nations. They form that species of the Law of Nations, which authors have distinguished by the name of Arbitrary.

To give at present a general direction, in relation to the distinction between Necessary and Voluntary Laws, we shall reserve, that the Necessary Law being always obligatory with respect to conscience, a nation ought never to lose sight of it, when it deliberates on the part it is to take, in order to fulfil its duty; but when it is requisite to examine what it may require

from other states, it ought to consult the Voluntary Law, the maxims of which are consecrated to the safety and advantage of universal society. — (*Droit des Gens*, Preliminaires.)

5. A Quasi-Legislature for Nations

EXTRACT FROM THE FINAL ACT OF THE SECOND INTERNATIONAL PEACE CONFERENCE AT THE HAGUE, 1907

Finally, the Conference recommends to the Powers the assembly of a Third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the programme of this Third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition.

In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory Committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an International Regulation, and of preparing a programme which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This Committee should further be entrusted with the task of proposing a system of organization and procedure for the Conference itself.

NOTE. — This recommendation of the Hague Conference of 1907 is very important. Up to the present time (June, 1914), several states have appointed Committees of their own to study from the domestic point of view the questions which are likely to come before the third Peace Conference, of which the regulation of the laws and customs of naval war is probably the most urgent. This is excellent for a first step; but an international body is required for the comparison and correlation of the separate Reports of these Committees, as was done before the Naval Conference of London in 1908 by a few British officials assisted by M. Fromageot, the distinguished French jurist.

6. A Quasi-State

THE CHARTER OF THE BRITISH SOUTH AFRICA COMPANY, 1889

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To all to whom these presents shall come, Greeting.

Whereas a Humble Petition has been presented to Us in Our Council by (here follows a series of names).

And whereas the said Petition states amongst other things: —

That the Petitioners and others are associated for the purpose of forming a Company or Association, to be incorporated, if to Us should seem fit, for the objects in the said Petition set forth, under the corporate name of The British South Africa Company.

That the existence of a powerful British Company, controlled by those of Our subjects in whom We have confidence, and having its principal field of operations in that region of South Africa lying to the north of Bechuanaland and to the west of Portuguese East Africa, would be advantageous to the commercial and other interests of Our subjects in the United Kingdom and in Our Colonies.

That the Petitioners desire to carry into effect divers concessions and agreements which have been made by certain of the chiefs and tribes inhabiting the said region, and such other concessions agreements grants and treaties as the Petitioners may hereafter obtain within the said region or elsewhere in Africa, with the view of promoting trade commerce civilization and good government (including the regulation of liquor traffic with the natives) in the territories which are or may be comprised or referred to in such concessions agreements grants and treaties as aforesaid.

That the Petitioners believe that if the said concessions agreements grants and treaties can be carried into effect, the condition of the natives inhabiting the said territories will be materially improved and their civilization advanced,

and an organization established which will tend to the suppression of the slave trade in the said territories, and to the opening up of the said territories to the immigration of Europeans, and to the lawful trade and commerce of Our subjects and of other nations.

That the success of the enterprise in which the Petitioners are engaged would be greatly advanced if it should seem fit to Us to grant them Our Royal Charter of incorporation as a British Company under the said name or title, or such other name and title, and with such powers, as to Us may seem fit for the purpose of more effectually carrying into effect the objects aforesaid.

That large sums of money have been subscribed for the purposes of the intended Company by the Petitioners and others, who are prepared also to subscribe or to procure such further sums as may hereafter be found requisite for the development of the said enterprise, in the event of Our being pleased to grant to them Our Royal Charter of incorporation as aforesaid.

Now, therefore, We having taken the said Petition into Our Royal consideration in Our Council, and being satisfied that the intentions of the Petitioners are praiseworthy and deserve encouragement, and that the enterprise in the Petition described may be productive of the benefits set forth therein, by Our Prerogative Royal and of Our especial grace, certain knowledge and mere motion, have constituted erected and incorporated, and by this Our Charter for Us and Our Heirs and Royal successors do constitute erect and incorporate into one body politic and corporate by the name of The British South Africa Company the said James Duke of Abercorn, Alexander William George Duke of Fife, Edric Frederick Lord Gifford, Cecil John Rhodes, Alfred Beit, Albert Henry George Grey and George Cawston, and such other persons and such bodies as from time to time become and are members of the body politic and corporate by these presents constituted, erected and incorporated, with perpetual succession and a common seal, with power to break alter or renew the same at discretion, and

with the further authorities, powers, and privileges conferred, and subject to the conditions imposed by this Our Charter: And We do hereby accordingly will ordain give grant constitute appoint and declare as follows (that is to say): —

1. The principal field of the operations of The British South Africa Company (in this Our Charter referred to as "the Company") shall be the region of South Africa lying immediately to the north of British Bechuanaland, and to the north and west of the South African Republic, and to the west of the Portuguese Dominions.

2. The Company is hereby authorised and empowered to hold, use and retain for the purposes of the Company and on the terms of this Our Charter, the full benefit of the concessions and agreements made as aforesaid, so far as they are valid, or any of them, and all interests, authorities and powers comprised or referred to in the said concessions and agreements. Provided always that nothing herein contained shall prejudice or affect any other valid and subsisting concessions or agreements which may have been made by any of the chiefs or tribes aforesaid, and in particular nothing herein contained shall prejudice or affect certain concessions granted in and subsequent to the year 1880 relating to the territory usually known as the district of the Tati; nor shall anything herein contained be construed as giving any jurisdiction, administrative or otherwise, within the said district of the Tati, the limits of which district are as follows, viz., from the place were the Shasi River rises to its junction with the Tati and Ramaquaban Rivers, thence along the Ramaquaban River to where it rises and thence along the watershed of those Rivers.

3. The Company is hereby further authorised and empowered, subject to the approval of one of Our Principal Secretaries of State (herein referred to as "Our Secretary of State") from time to time, to acquire by any concession agreement grant or treaty, all or any rights interests authorities jurisdictions and powers of any kind or nature whatever, including powers necessary for the purposes of government, and the preservation of public order in or for the protection of territories, lands, or

property comprised or referred to in the concessions and agreements made as aforesaid or affecting other territories, lands, or property in Africa, or the inhabitants thereof, and to hold, use and exercise such territories, lands, property, rights, interests, authorities, jurisdictions and powers respectively for the purposes of the Company, and on the terms of this Our Charter.

4. Provided that no powers of government or administration shall be exercised under or in relation to any such last-mentioned concession agreement grant or treaty, until a copy of such concession grant or treaty in such form and with such maps or particulars as Our Secretary of State approves verified as he requires, has been transmitted to him, and he has signified his approval thereof either absolutely or subject to any conditions or reservations; and provided also that no rights, interests, authorities, jurisdictions or powers of any description shall be acquired by the Company within the said district of the Tati as hereinbefore described, without the previous consent in writing of the owners for the time being of the concessions above referred to relating to the said district, and the approval of Our Secretary of State.

5. The Company shall be bound by and shall fulfill all and singular the stipulations on its part contained in any such concession grant or treaty as aforesaid, subject to any subsequent agreement affecting those stipulations approved by Our Secretary of State.

6. The Company shall always be and remain British in character and domicile, and shall have its principal office in Great Britain, and the Company's principal representative in South Africa, and the Directors shall always be natural born British subjects, or persons who have been naturalized as British subjects by or under an Act of Parliament of Our United Kingdom; but this Article shall not disqualify any person nominated a Director by this Our Charter, or any person whose election as a Director shall have been approved by Our Secretary of State, from acting in that capacity.

7. In case at any time any difference arises between any chief or tribe inhabiting any of the territories aforesaid and the Com-

pany, that difference shall, if Our Secretary of State so require, be submitted by the Company to him for his decision, and the Company shall act in accordance with such decision.

8. If at any time Our Secretary of State thinks fit to dissent from or object to any of the dealings of the Company with any foreign power and to make known to the Company any suggestion founded on that dissent or objection, the Company shall act in accordance with such suggestion.

9. If at any time Our Secretary of State thinks fit to object to the exercise by the Company of any authority, power, or right within any part of the territories aforesaid, on the ground of there being an adverse claim to or in respect of that part, the Company shall defer to that objection until such time as any such claim has been withdrawn or finally dealt with or settled by Our Secretary of State.

10. The Company shall to the best of its ability preserve peace and order in such ways and manners as it shall consider necessary, and may with that object make ordinances (to be approved by Our Secretary of State) and may establish and maintain a force of police.

11. The Company shall to the best of its ability discourage and, so far as may be practicable, abolish by degrees, any system of slave trade or domestic servitude in the territories aforesaid.

12. The Company shall regulate the traffic in spirits and other intoxicating liquors within the territories aforesaid, so as, as far as practicable, to prevent the sale of any spirits or other intoxicating liquor to any natives.

13. The Company as such, or its officers as such, shall not in any way interfere with the religion of any class or tribe of the peoples of the territories aforesaid or of any of the inhabitants thereof, except so far as may be necessary in the interests of humanity, and all forms of religious worship or religious ordinances may be exercised within the said territories and no hindrance shall be offered thereto except as aforesaid.

14. In the administration of justice to the said peoples or inhabitants, careful regard shall always be had to the customs

and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to the holding, possession, transfer and disposition of lands and goods and testate or intestate succession thereto, and marriage divorce and legitimacy and other rights of property and personal rights, but subject to any British laws which may be in force in any of the territories aforesaid, and applicable to the peoples or inhabitants thereof.

15. If at any time Our Secretary of State thinks fit to dissent from or object to any part of the proceedings or system of the Company relative to the peoples of the territories aforesaid or to any of the inhabitants thereof, in respect of slavery or religion or the administration of justice, or any other matter, he shall make known to the Company his dissent or objection, and the Company shall act in accordance with his directions duly signified.

16. In the event of the Company acquiring any harbour or harbours, the Company shall freely afford all facilities for or to Our ships therein without payment, except reasonable charges for work done or services rendered or materials or things supplied.

17. The Company shall furnish annually to Our Secretary of State, as soon as conveniently may be after the close of the financial year, accounts of its expenditure for administrative purposes, and of all sums received by it by way of public revenue, as distinguished from its commercial profits, during the financial year, together with a report as to its public proceedings and the condition of the territories within the sphere of its operations. The Company shall also on or before the commencement of each financial year furnish to Our Secretary of State an estimate of its expenditure for administrative purposes, and of its public revenue (as above defined) for the ensuing year. The Company shall in addition from time to time furnish to Our Secretary of State any reports, accounts or information with which he may require to be furnished.

18. The several officers of the Company shall, subject to the rules of official subordination, and to any regulations that may be agreed upon, communicate freely with Our High Com-

missioner in South Africa, and any others Our officers, who may be stationed within any of the territories aforesaid, and shall pay due regard to any requirements, suggestions, or requests which the said High Commissioner or other officers shall make to them or any of them, and the Company shall be bound to enforce the observance of this article.

19. The Company may hoist and use on its buildings and elsewhere in the territories aforesaid, and on its vessels, such distinctive flag indicating the British character of the Company as our Secretary of State and the Lords Commissioners of the Admiralty shall from time to time approve.

20. Nothing in this Our Charter shall be deemed to authorize the Company to set up or grant any monopoly of trade; provided that the establishment of or the grant of concessions for banks, railways, tramways, docks, telegraphs, water-works, or other similar undertakings or the establishment of any system of patent or copyright approved by our Secretary of State, shall not be deemed monopolies for this purpose. The Company shall not, either directly or indirectly hinder any Company or persons who now are, or hereafter may be, lawfully and peaceably carrying on any business, concern, or venture within the said District of the Tati hereinbefore described, but shall by permitting and facilitating transit by every lawful means to and from the District of the Tati, across its own territories or where it has jurisdiction in that behalf, and by all other reasonable and lawful means, encourage, assist and protect all British subjects who now are, or hereafter may be, lawfully and peaceably engaged in the prosecution of a lawful enterprise within the said District of the Tati.

21. For the preservation of elephants and other game, the Company may make such regulations and (notwithstanding anything hereinbefore contained) may impose such licence duties on the killing or taking of elephants or other game as they may see fit: Provided that nothing in such regulations shall extend to diminish or interfere with any hunting rights which may have been or may hereafter be reserved to any native chiefs or tribes by treaty, save so far as any such reg-

ulations may relate to the establishment and enforcement of a close season.

22. The Company shall be subject to and shall perform and undertake all the obligations contained in or undertaken by Ourselves under any treaty agreement or arrangement between Ourselves and any other State or Power whether already made or hereafter to be made. In all matters relating to the observance of this Article, or to the exercise within the Company's territories for the time being, of any jurisdiction exerciseable by Us under the Foreign Jurisdiction Acts, the Company shall conform to and observe and carry out all such directions as may from time to time be given in that behalf by Our Secretary of State, and the Company shall appoint all necessary officers to perform such duties, and shall provide such Courts and other requisites as may from time to time be necessary for the administration of justice.

23. The original share capital of the Company shall be £1,000,000 divided into 1,000,000 shares of £1 each.

24. The Company is hereby further specially authorized and empowered for the purposes of this Our Charter from time to time —

(i) To issue shares of different classes or descriptions, to increase the share capital of the Company, and to borrow moneys by debentures or other obligations.

(ii) To acquire and hold, and to charter or otherwise deal with, steam vessels and other vessels.

(iii) To establish or authorize banking companies and other companies and undertakings or associations of every description, for purposes consistent with the provisions of this Our Charter.

(iv) To make and maintain roads railways telegraphs harbours and any other works which may tend to the development or improvement of the territories of the Company.

(v) To carry on mining and other industries, and to make concessions of mining forestal or other rights.

(vi) To improve develop clear plant irrigate and cultivate any lands included within the territories of the Company.

(vii) To settle any such territories and lands as aforesaid, and to aid and promote immigration.

(viii) To grant lands for terms of years or in perpetuity, and either absolutely, or by way of mortgage or otherwise.

(ix) To make loans or contributions of money or money's worth, for promoting any of the objects of the Company.

(x) To acquire and hold personal property.

(xi) To acquire and hold (without licence in mortmain or other authority than this Our Charter) lands in the United Kingdom, not exceeding five acres in all, at any one time for the purposes of the offices and business of the Company, and (subject to any local law) lands in any of Our Colonies or Possessions and elsewhere, convenient for carrying on the management of the affairs of the Company, and to dispose from time to time of any such lands when not required for that purpose.

(xii) To carry on any lawful commerce, trade, pursuit, business operations, or dealing whatsoever in connection with the objects of the Company.

(xiii) To establish and maintain agencies in Our Colonies and Possessions, and elsewhere.

(xiv) To sue and be sued by the Company's name of incorporation, as well in Our Courts in Our United Kingdom, or in Our Courts in Our Colonies or Possessions, or in Our Courts in Foreign countries or elsewhere.

(xv) To do all lawful things incidental or conducive to the exercise or enjoyment of the rights, interests, authorities and powers of the Company in this Our Charter expressed or referred to, or any of them.

25. Within one year after the date of this Our Charter, or such extended period as may be certified by our Secretary of State, there shall be executed by the Members of the Company for the time being a Deed of Settlement, providing so far as necessary for —

(i) The further definition of the objects and purposes of the Company.

(ii) The classes or descriptions of shares into which the capital

of the Company is divided, and the calls to be made in respect thereof, and the terms and conditions of membership of the Company.

(iii) The division and distribution of profits.

(iv) General Meetings of the Company; the appointment by Our Secretary of State (if so required by him) of an Official Director, and the number qualification appointment remuneration rotation removal and powers of Directors of the Company, and of other officers of the Company.

(v) The registration of Members of the Company, and the transfer of shares in the capital of the Company.

(vi) The preparation of annual accounts to be submitted to the Members at a General Meeting.

(vii) The audit of those accounts by independent auditors.

(viii) The making of by-laws.

(ix) The making and using of official seals of the Company.

(x) The constitution and regulation of Committees or Local Boards of Management.

(xi) The making and execution of supplementary deeds of settlement.

(xii) The winding up (in case of need) of the Company's affairs.

(xiii) The government and regulation of the Company and of its affairs.

(xiv) Any other matters usual or proper to be provided for in respect of a chartered Company.

26. The Deed of Settlement shall, before the execution thereof, be submitted to and approved by the Lords of Our Council, and a certificate of their approval thereof, signed by the Clerk of our Council, shall be endorsed on this Our Charter and be conclusive evidence of such approval, and on the Deed of Settlement, and such Deed of Settlement shall take effect from the date of such approval, and shall be binding upon the Company, its members, officers and servants, and for all other purposes whatsoever.

27. The provisions of the Deed of Settlement or of any supplementary Deed for the time being in force, may be from time

to time repealed, varied or added to by a supplementary Deed, made and executed in such manner as the Deed of Settlement prescribes. Provided that the provisions of any such Deed relative to the Official Director shall not be repealed, varied or added to without the express approval of Our Secretary of State.

28. The Members of the Company shall be individually liable for the debts contracts engagements and liabilities of the Company to the extent only of the amount, if any, for the time being unpaid, on the shares held by them respectively.

29. Until such Deed of Settlement as aforesaid takes effect the said James Duke of Abercorn shall be the President; the said Alexander William George Duke of Fife, shall be Vice-President; and the said Edric Frederick Lord Gifford, Cecil John Rhodes, Alfred Beit, Albert Henry George Grey, and George Cawston, shall be the Directors of the Company; and may on behalf of the Company do all things necessary or proper to be done under this Our Charter by or on behalf of the Company: Provided always that, notwithstanding anything contained in the Deed of Settlement of the Company, the said James Duke of Abercorn, Alexander William George Duke of Fife, and Albert Henry George Grey, shall not be subject to retire from office in accordance with its provisions but shall be and remain Directors of the Company until death, incapacity to act, or resignation, as the case may be.

30. And We do further will ordain and declare that this Our Charter shall be acknowledged by Our governors and Our naval and military officers and Our consuls, and Our other officers in Our Colonies and Possessions, and on the high seas, and elsewhere, and they shall severally give full force and effect to this Our Charter, and shall recognize and be in all things aiding to the Company and its officers.

31. And We do further will, ordain and declare that this Our Charter shall be taken construed and adjudged in the most favourable and beneficial sense for, and to the best advantage of the Company as well in Our Courts in Our United Kingdom, and in Our Courts in Our Colonies or Possessions, and

in Our Courts in Foreign countries or elsewhere, notwithstanding that there may appear to be in this Our Charter any non-recital, mis-recital, uncertainty or imperfection.

32. And We do further will, ordain and declare that this Our Charter shall subsist and continue valid, notwithstanding any lawful change in the name of the Company or in the Deed of Settlement thereof, such change being made with the previous approval of Our Secretary of State signified under his hand.

33. And We do further will, ordain and declare that it shall be lawful for Us Our heirs and successors and we do hereby expressly reserve to Ourselves Our heirs and successors the right and power by writing under the Great Seal of the United Kingdom at the end of 25 years from the date of this Our Charter, and at the end of every succeeding period of ten years, to add to alter or repeal any of the provisions of this Our Charter or to enact other provisions in substitution for or in addition to any of its existing provisions. Provided that the right and power thus reserved shall be exercised only in relation to so much of this Our Charter as relates to administrative and public matters. And We do further expressly reserve to Ourselves, Our heirs and successors the right to take over any building or works belonging to the Company, and used exclusively or mainly for administrative or public purposes on payment to the Company of such reasonable compensation as may be agreed, or as failing agreement may be settled by the Commissioners of Our Treasury. And We do further appoint, direct and declare that any such writing under the said Great Seal shall have full effect and be binding upon the Company, its members, officers and servants, and all other persons, and shall be of the same force effect and validity as if its provisions had been part of and contained in these presents.

34. Provided always and We do further declare that nothing in this Our Charter shall be deemed or taken in anywise to limit or restrict the exercise of any of Our rights or powers with reference to the protection of any territories or with reference to the government thereof should We see fit to include the same within Our dominions.

35. And We do lastly will, ordain and declare without prejudice to any power to repeal this Our Charter by law belonging to Us Our heirs and successors, or to any of Our Courts ministers or officers independently of this present declaration and reservation, that in case at any time it is made to appear to Us in Our Council that the Company has substantially failed to observe and conform to the provisions of this Our Charter, or that the Company is not exercising its powers under the concessions, agreements, grants, and treaties aforesaid, so as to advance the interests which the Petitioners have represented to Us to be likely to be advanced by the grant of this Our Charter, it shall be lawful for Us Our heirs and successors, and We do hereby expressly reserve and take to Ourselves Our heirs and successors the right and power by writing under the Great Seal of Our United Kingdom to revoke this Our Charter, and to revoke and annul the privileges, powers and rights hereby granted to the Company. — (London *Gazette*, Dec. 20, 1889.)

Note. — The territory of the British South Africa Company was greatly extended by a further grant from the Crown in 1891. Its administration has been provided for by a series of Orders in Council issued at intervals as required, special care being taken to protect the natives from ill-treatment. In 1914 a Legislative Council was chosen in which for the first time there were twelve elected members to six nominated members. No doubt in course of time Charter Government will be superseded by Responsible Government.

7. A Mode of Recognition — By Declaration

Frederick T. Frelinghuysen, Secretary of State, duly empowered therefore by the President of the United States of America, and pursuant to the advice and consent of the Senate, heretofore given, acknowledges the receipt of the foregoing notification from the International Association of the Congo, and declares that, in harmony with the traditional policy of the United States, which enjoins a proper regard for the commercial interests of their citizens while, at the same time, avoiding interference with controversies between other powers

as well as alliances with foreign nations, the Government of the United States announces its sympathy with, and approval of, the humane and benevolent purposes of the International Association of the Congo, administering, as it does, the interests of the Free States there established, and will order the officers of the United States, both on land and sea, to recognize the flag of the International African Association, as the flag of a friendly government.

In testimony whereof, he has hereunto set his hand and affixed his seal, this twenty-second day of April, A.D. 1884, in the city of Washington.

FREDK. T. FRELINGHUYSEN.

— (British Parliamentary Papers, *Africa*, No. 4, (1885), p. 263; Moore, *International Law Digest*, I, pp. 117, 118.)

8. Another Mode of Recognition — By Treaty

Article I

The International Association of the Congo engages not to levy duty on articles or merchandize imported directly or in transit into its present or future possessions in the basins of the Congo and the Niadi-Kwilu, or into its possessions situated on the Atlantic Ocean. This exemption from duties especially applies to merchandize and articles of commerce which are carried by the roads made round the cataracts of the Congo.

Article II

The Subjects of the German Empire shall have the right of sojourning and of establishing themselves on the territories of the Association. They shall be treated on the same footing as the subjects of the most favoured nation, including the inhabitants of the country, so far as concerns the protection of their persons and possessions, the free exercise of their religion, the recognition and defence of their rights, as well as in matters of navigation, trade, or manufactures.

Especially, they shall have the right of buying, selling, and leasing lands and buildings situated in the territories of the Association, of establishing commercial houses, and carrying on trade or the coasting trade under the German flag.

Article III

The Association engages never to grant any privileges whatsoever to the subjects of any other nation without their being immediately extended to German subjects.

Article IV

In the event of the cession of the present or future territory of the Association, or of any part of it, the obligations contracted by the Association towards the German Empire shall be transferred to the occupier. These obligations and the rights granted by the Association to the German Empire and its subjects shall remain in force after every cession as far as regards each new occupier.

Article V

The German Empire recognizes the flag of the Association — a blue flag with a golden star in the centre — as that of a friendly State.

Article VI

The German Empire is ready on its part to recognize the frontiers of the territory of the Association and of the new State which is to be created, as they are shewn in the annexed Map.

Article VII

This Convention shall be ratified and the ratification shall be exchanged with the least possible delay.

This Convention shall come into force immediately after the exchange of the ratifications.

Done at Berlin the 8th. November, 1884.

— (British Parliamentary Papers, *Africa*, No. 4, (1885), pp. 263–264.)

9. Conditional Recognition of the Independence of Servia

The High Contracting Parties recognize the Independence of the Principality of Servia, subject to the conditions set forth in the following Article.

In Servia the difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever.

The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to Servia, as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communions, or to their relations with their spiritual chiefs. — (*Treaty of Berlin, 1878*, Arts. 34–35.)

10. Delayed Recognition

EXTRACT FROM A SPEECH OF SIR EDWARD GREY [1]

On the general question I will not go back to the subject of the old *régime* in the Congo further than to say that I have always made it very clear . . . that we did not hold the Belgian Parliament or the Belgian people responsible for any of those occurrences (i.e. The atrocities perpetrated on the natives).

. . . . . .

I would only say as regards the particular point of the Congo, that I am sure the reports which have been laid before the House show that the condition of affairs has completely changed

[1] These words, spoken in the House of Commons on May 29, 1913, refer to the annexation of the Congo Free State by Belgium, which took place in 1909, but was not recognized by Great Britain till 1913, when it was quite clear that the worst of the oppressions inflicted on the natives during the latter years of Leopold II had been remedied by the constitutional government of Belgium and the humane efforts of the new King, Albert I.

from that which existed under the old *régime* before the responsible Government of Belgium took the Congo in hand. — (*The Times*, May 30, 1913.)

11. A Law-making Agreement

The Declaration of Paris, 1856

Considering:

That maritime law, in time of war, has long been the subject of deplorable disputes:

That the uncertainty of the law and of the duties in this same matter gives occasion to differences of opinion between neutrals and belligerents which may cause serious difficulties and even conflicts:

That it is consequently advantageous to establish a uniform doctrine on so important a point:

That the Plenipotentiaries assembled at the Congress of Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into international relations fixed principles in this respect:

The above-mentioned Plenipotentiaries, being duly authorised, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn Declaration: —

1. Privateering is and remains abolished:

2. The neutral flag covers enemy's goods, with the exception of contraband of war:

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag:

4. Blockades, in order to be binding, must be effective; that is to say maintained by a force sufficient really to prevent access to the enemy's coast.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not been called upon to take part in the Congress of Paris, and invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present Declaration is not and shall not be binding except between those powers who have acceded or shall accede to it.

Note. — When the above Declaration was drawn up it was signed by seven powers: — Great Britain, France, Austria, Russia, Prussia, Sardinia and Turkey. Since then forty more have acceded to it, the United States being the only one of any importance whose signature is still withheld. But American statesmen have acted on it in every struggle to which their country has been a party since 1856, and when the United States has been neutral have expected the belligerents to observe it towards American Shipping. The unbroken observance of nearly sixty years has made the Declaration into International Law.

12. An Agreement that Purported to be Declaratory of International Law

The Rules of the First Armed Neutrality, 1780

Their Majesties after having already insisted, in their declarations to the belligerent powers, on the general principles of natural right, of which the freedom of commerce and navigation as well as the rights of neutral nations are a direct consequence, have resolved no longer to allow them to be dependent on an arbitrary interpretation, suggested by isolated and momentary interests. With this view, they have agreed,

I. That all vessels may freely navigate from port to port, and upon the coasts of nations at war.

II. That property belonging to the subjects of States at war, shall be free on board neutral vessels, excepting merchandise of contraband.

III. That to determine what characterises a blockaded port, this term shall only be allowed to those where, from the arrangements of the power which is blockading, with vessels stationary and sufficiently near, there is an evident danger in entering.

IV. That neutral vessels cannot be stopped, without just cause and evident reasons; that they shall be judged without delay; that the proceedings shall always be uniform, prompt, and legal; and that, in every instance, besides the reparation afforded in cases in which there has been loss, but not offence, complete satisfaction shall be given for the insult offered to the flag of their Majesties. — (*Treaty between Russia and Denmark, 1780.*)

NOTE. — All the important Continental states accepted these rules, while Great Britain opposed most of them, especially the second and third. In the course of thirty years from their promulgation they were discarded by their authors, revived again in 1800 by the Second Armed Neutrality, and again disregarded under stress of altered circumstances.

13. An Agreement that may be called Semi-Declaratory of International Law

THE THREE RULES OF THE TREATY OF WASHINGTON, 1871

In deciding the matters submitted to the Arbitrators, they shall be governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of International Law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case.

Rules

A neutral Government is bound —

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of International Law which were in force at the time when the claims mentioned in Article I. arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the high contracting parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them. — (*Article VI of the Treaty of Washington, 1871, between Great Britain and the United States.*)

Note. — It is impossible to say that an agreement is declaratory of existing law when one side holds that it makes new law. In this particular case no formal invitation to accede to the Rules was given by Great Britain and the United States to the other maritime powers, partly because it was known that some important European states were not prepared to accept them, and partly because the two parties to them were unable to agree on the meaning of certain clauses in them. But nevertheless their general sense was embodied in the Hague Convention of 1907 on *The Rights and Duties of Neutral Powers in Maritime War*. But for the phrase which bound neutral powers to use "due diligence" in order to perform certain duties was substituted the formula, "employ the means at its disposal." (See pages 310–315.)

14. An Agreement for a New Rule between two States only

If war should arise between the two contracting parties, . . . merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniencies, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting Powers shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce. — (*Article XXIII of the Treaty between the United States and Prussia, 1785.*)

Note. — This Treaty expired in 1796, and Article XXIII has never been revived.

15. Prize Court Judges as Exponents of International Law

In forming that judgment, I trust that it has not escaped my anxious recollection for one moment, what it is that the duty of my station calls for from me; — namely, to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of Nations holds out, without distinction, to independent states, some happening to be neutral and some to be belligerent. The seat of judicial authority is, indeed, locally here, in the belligerent country, according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden as a neutral country, which he would not admit to belong to Great Britain in the same character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered,

as the universal law upon the question; a question regarding one of the most important rights of belligerent nations relatively to neutrals. — (*Extract from Sir William Scott's Judgment in the Swedish Convoy Case,* 1 C. Rob., 350.)

16. Extract from a State Paper which cleared up a Disputed Point

If a subject of the King of Prussia is injured by or has a demand upon any person here, he ought to apply to his Majesty's courts of justice, which are open and indifferent to foreigner or native; so *vice versa,* if a subject here is wronged by a person living in the dominions of his Prussian Majesty, he ought to apply for redress in the King of Prussia's courts of justice.

If the matter of complaint be a capture at sea during the war, and the question relative to prize, he ought to apply to the judicatures established to try these questions.

The Law of Nations, founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage, does not allow of reprisals, except in case of violent injuries, directed or supported by the state, and justice absolutely denied *in re minime dubia* by all the tribunals, and afterwards by the prince. Where the judges are left free and give sentence according to their conscience, though it should be erroneous, that would be no ground for reprisals.

. . . . . .

The King of Prussia has engaged his royal word to pay the Silesia debt to private men. It is negotiable, and many parts may have been assigned to the subjects of other powers. It will not be easy to find an instance where a prince has thought fit to make reprisals upon a debt due from himself to private men. There is a confidence that this will not be done. A private man lends money to a prince upon the faith of an engagement of honour, because a prince cannot be compelled, like other men, in an adverse way, in a court of justice. So scrupulously did England, France and Spain adhere to this public faith, that, even during the war, they suffered no enquiry to be made whether any part of the public debt was due to sub-

jects of the enemy, though it is certain many English had money in the French funds, and many French had money in ours. — (*British Answer to the Prussian Memorial on the Silesian Loan Question, 1753.*)

17. Extract from a Domestic Document which influenced largely the Growth of the International Law of Land Warfare

Section IV

81. Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

82. Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and vocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers — such men, or squads of men, are not public enemies, and therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

83. Scouts, or single soldiers, if disguised in the dress of the country, or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

84. Armed prowlers, by whatever names they may be called, or persons of the enemies' territory, who steal within the lines of the hostile army, for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

85. War-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they, if discovered and secured before their conspiracy has matured to an actual rising, or to armed violence. — (*Instructions for the Government of Armies of the United States in the Field, 1863.*)

Note. — The Instructions, a few Articles of which are given above, were drawn up by Dr. Francis Lieber, and issued to the Federal armies in the American Civil War by the Government of the United States in 1863. When in 1874 an European Congress met at Brussels to discuss the laws of land warfare, Dr. Lieber's Instructions were freely drawn upon in the Declaration then adopted. Though this Declaration was never ratified, its form and matter influenced very largely the composition of the *Règlement* annexed to the Convention concerning the Laws and Customs of War on Land drawn up at the Hague in 1899, and revised in 1907. Thus the work of a private citizen, adopted by his government, had a marked influence in shaping the great Code of Land Warfare which has now been accepted by most civilized nations. (See pages 182–194.)

PART II

DOCUMENTS ILLUSTRATING QUESTIONS CONNECTED WITH THE LAW OF PEACE

1. Voluntary Restrictions on State Action

Great Britain and the United States in Central America

Article I

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any State or people for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess, with any State or Government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other. — (*Article I of the Clayton-Bulwer Treaty, 1850.*)

2. Voluntary Restrictions on State Action

British and German Spheres of Action in the Western Pacific

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Government of His Majesty the German Emperor, having resolved to define the limits of the British and German spheres of influence in the Western Pacific;

The undersigned, duly empowered for that purpose, viz: —

1. Sir Edward Baldwin Malet, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary;

2. Count Herbert Bismark, His Imperial Majesty's Under-Secretary of State for Foreign Affairs;

have agreed, on behalf of their respective Governments, to make the following Declaration: —

1. For the purpose of this Declaration the expression "Western Pacific" means that part of the Pacific Ocean lying between the 15th parallel of north latitude and the 30th parallel of south latitude, and between the 165th meridian of longitude west and the 130th meridian of longitude east of Greenwich.

2. A Conventional line of demarcation in the Western Pacific is agreed to, starting from the north-east coast of New Guinea, at a point near Nitre Rock, on the 8th parallel of south latitude, being the boundary between the British and German Possessions on that Coast, and following that parallel to point A, and thence continuing to points B, C, D, E, F, and G, as indicated in the accompanying Charts, which points are situated as follows: — (Here follow a number of nautical directions.)

3. Germany engages not to make acquisitions of territory, accept Protectorates, or interfere with the extension of British influence, and to give up any acquisitions of territory or Protectorates already established in that part of the Western Pacific lying to the east, south-east, or south of the said Conventional line.

4. Great Britain engages not to make acquisitions of territory, accept Protectorates, or interfere with the extension of

German influence, and to give up any acquisitions of territory or Protectorates already established in that part of the Western Pacific lying to the west, north-west, or north of the said Conventional line.

5. Should further surveys show that any islands, now indicated on the said Charts as lying on one side of the said Conventional line, are in reality on the other side, the said line shall be modified so that such islands shall appear on the same side of the line as at present shown on the said Charts.

6. This Declaration does not apply to the Navigator Islands (Samoa), which are affected by Treaties with Great Britain, Germany, and the United States; not to the Friendly Islands (Tonga), which are affected by Treaties with Great Britain and Germany; nor to the Island of Niué (Savage Island), which groups of Islands shall continue to form a neutral region; nor to any islands or places in the Western Pacific which are now under the sovereignty or protection of any other civilized Power than Great Britain or Germany.

Declared and signed in duplicate at Berlin, this sixth day of April, one thousand eight hundred and eighty six. — (*Declaration of April 6th, 1886.*)

3. Restrictions on State Action Imposed by Superior Force

Russia and Turkey in the Black Sea

Article XIII

The Black Sea being neutralised according to the terms of Article XI, the maintenance or establishment upon its coast of military-maritime arsenals becomes alike unnecessary and purposeless; in consequence, His Majesty the Emperor of all the Russias and His Imperial Majesty the Sultan engage not to establish or to maintain upon that coast any military-maritime arsenal. — (*Treaty of Paris, 1856.*)

Note. — This Article was abrogated by Article I of the Treaty of London, 1871, the parties to which are the six Great Powers of Europe and Turkey.

4. Intervention of the United States in Cuba

Last August an insurrection broke out in Cuba which it speedily grew evident that the existing Cuban Government was powerless to quell. This Government was repeatedly asked by the then Cuban Government to intervene, and finally was notified by the President of Cuba that he intended to resign; that his decision was irrevocable; that none of the other constitutional officers would consent to carry on the Government, and that he was powerless to maintain order. It was evident that chaos was impending, and there was every probability that if steps were not immediately taken by this Government to try to restore order, the representatives of various European nations in the island would apply to their respective governments for armed intervention in order to protect the lives and property of their citizens. Thanks to the preparedness of our Navy, I was able immediately to send enough ships to Cuba to prevent the situation from becoming hopeless; and I furthermore despatched to Cuba the Secretary of War and the Assistant Secretary of State, in order that they might grapple with the situation on the ground. All efforts to secure an agreement between the contending factions, by which they should themselves come to an amicable understanding and settle upon some *modus vivendi* — some provisional government of their own — failed. Finally the President of the Republic resigned. The quorum of Congress assembled failed by deliberate purpose of its members, so that there was no power to act on his resignation, and the Government came to a halt. In accordance with the so-called Platt amendment, which was embodied in the constitution of Cuba, I thereupon proclaimed a provisional government for the Island, the Secretary of War acting as provisional governor until he could be replaced by Mr. Magoon, the late minister to Panama and governor of the Canal Zone on the Isthmus; troops were sent to support them and to relieve the Navy, the expedition being handled with most satisfactory speed and efficiency. The insurgent chiefs immediately agreed that their troops should lay down their arms and disband;

and the agreement was carried out. The provisional government has left the personnel of the old government and the old laws, so far as might be, unchanged, and will thus administer the island for a few months until tranquillity can be restored, a new election properly held, and a new government inaugurated. Peace has come in the island; and the harvesting of the sugar-cane crop, the great crop of the island, is about to proceed.

When the election has been held and the new government inaugurated in peaceful and orderly fashion the provisional government will come to an end. I take this opportunity of expressing upon behalf of the American people, with all possible solemnity, our most earnest hope that the people of Cuba will realize the imperative need of preserving justice and keeping order in the island. The United States wishes nothing of Cuba except that it shall prosper morally and materially, and wishes nothing of the Cubans save that they shall be able to preserve their independence. If the elections become a farce, and if the insurrectionary habit becomes confirmed in the Island, it is absolutely out of the question that the Island should continue independent; and the United States, which has assumed the sponsorship before the civilized world for Cuba's career as a nation, would again have to intervene and to see that the government was managed in such orderly fashion as to secure the safety of life and property. The path to be trodden by those who exercise self-government is always hard, and we should have every charity and patience with the Cubans as they tread this difficult path. I have the utmost sympathy with, and regard for, them; but I most earnestly adjure them solemnly to weigh their responsibilities and to see that when their new government is started it shall run smoothly, and with freedom from flagrant denial of right on the one hand, and from insurrectionary disturbances on the other. — (*Message of President Roosevelt, Dec. 3, 1906.*)

5. Intervention on the Ground of Humanity

GREECE AND TURKEY, 1827

The case of Greece is precisely similar to that of Belgium, Greece never achieved a *de facto* independence; on the contrary, at the moment of the European intervention, the Greek patriots were on the point of succumbing. The European Powers did not recognise, they saved Greece. As a matter of European policy, they thought fit to act in a manner decidedly hostile towards Turkey. The battle of Navarino may have been an "untoward event," but it was the natural and almost inevitable consequence of a forcible intervention to prevent the Turkish Government from reducing its subjects to submission. The emancipation of Greece, effected by Europe, was a high act of policy above and beyond the domain of law. As an act of policy, it may have been, and probably was, justifiable; but it was not the less a hostile act, which, if she had dared, Turkey might properly have resented by war. — (Letters of *Historicus*, I.)

6. Intervention to end Illegal Intervention

THE UNITED STATES, FRANCE, AND MEXICO

SECRET DIPLOMACY

In November, 1865, I went to Paris, at the solicitation of the Emperor Napoleon, breakfasted with him, and after breakfast spent two hours and a half with him in his cabinet, during which period he made with me a secret treaty, subject to the approval of the President, by which he agreed to withdraw his army from Mexico, in twelve, eighteen, and twenty-four months; and on that occasion I also arranged for the purchase of French Guiana, and placed in Mr. Seward's hands the terms of purchase fixed by the French minister of foreign affairs. The arrangement in regard to Mexico was approved by the President; and I so informed the Emperor. One of the conditions of that arrangement was, it should be considered a profound secret, and not to be made known to our minister in Paris, or even to the French

minister of foreign affairs, until the Emperor should make the annunciation in the *Moniteur* in the following April. At the solicitation of Marshal Niel, however, who, when he was advised of the arrangement, declared it to be unsafe to try to evacuate Mexico in separate detachments, and insisted that the whole army must be removed at once, the Emperor subsequently gave us notice that he would retire from Mexico in March, 1867, sixteen months from the time of our arrangement, instead of twelve, eighteen, and twenty-four months, and this he did in good faith. — (Letter of General J. W. Webb, in Moore's *International Law Digest*, vol VI, p. 504.)

NOTE. — It appears that President Johnson declined to purchase French Guiana, and the Emperor declined to sell instead the island of Martinique or the island of S^{t} Pierre. This part of the bargain, therefore, fell through.

7. Intervention to put down Revolution

THE HOLY ALLIANCE TREATY OF 1815

Their Majesties the Emperor of Austria, the King of Prussia and the Emperor of Russia, as a consequence of the great events which have signalized, in Europe, the course of the last three years, and principally of the benefits which it has pleased Divine Providence to spread over the States whose governments have placed their trust and hope in Him alone, having acquired the complete conviction that it is necessary to base the system to be adopted by the States in their mutual relations upon the sublime truths taught by the eternal religion of the Holy Saviour;

Declare solemnly, that the present instrument has only for its object to manifest before all the world their invincible determination to take for their rule of conduct, whether in the administration of their respective States, or in their political relations with other governments, none but the precepts of that holy religion, precepts of justice, of charity, and of peace; which, far from being applicable only to private life, ought, on the contrary, to have a direct influence on the resolves of princes, and to guide all their steps, as being the sole method of strength-

ening human institutions and remedying their imperfections. In consequence, their majesties have agreed to the following articles: —

Article I. Conformably to the words of the Holy Scriptures, which command all men to look upon each other as brethren, the three contracting monarchs will remain united by the bonds of a real and indissoluble brotherhood; and considering themselves as members of one country, they will afford each other, on every occasion and in every place, assistance, aid, and succour: looking upon themselves with regard to their subjects and their armies, as fathers of a family, they will govern them in that spirit of brotherhood with which they are animated for the protection of religion, peace, and justice.

Article II. In consequence, the only principles in force, whether between the said sovereigns or between their subjects, shall be that of reciprocally doing each other good; of testifying, by unalterable good-will, the mutual affection with which they ought to be animated; of considering all men only as members of the same Christian nation, the three allied princes only regarding themselves as delegated by Providence to govern three branches of the same family, namely, Austria, Prussia, and Russia: confessing thus that the Christian nation, of which they and their people are a part, has in reality, no other Sovereign than He to whom power properly belongs, because in Him alone are found the treasures of love, of knowledge, and of infinite wisdom, that is to say, God, our Divine Saviour Jesus Christ, the Word of the most High, the Word of Life. Their majesties recommend in consequence to their people, with the most tender solicitude, as the sole method of enjoying that peace which arises from a good conscience, and which alone is durable, to strengthen themselves more and more each day in those principles, and in the exercise of those duties which the Divine Saviour has taught mankind.

Article III. All those powers that may desire to make a solemn avowal of the sacred principles which have dictated the present act, and that will acknowledge how important it is to the happiness of nations, too long disturbed, that these

truths shall henceforth exercise on human destiny all the influence which is their due, shall be received with equal earnestness and affection into this Holy Alliance.

NOTE. — The general terms of this treaty were soon interpreted as a condemnation of all popular movements in favour of political freedom. At the Congress of Troppau in 1820 the Ministers of Russia and Prussia put forth a joint circular, explaining that, while the Holy Alliance was not hostile to reforms proceeding from the voluntary action of Sovereigns, it was determined to put down violence and revolution. Next year the Sovereigns assembled at the Congress of Laybach proclaimed in a circular despatch that they would regard as null and disallowed by the public law of Europe any pretended reform effected by revolt and open force. In pursuance of these ideas the Alliance interfered in Spain, Naples and other States, and would have extended its operations to Central and South America, had it not been checked by the concerted opposition of George Canning, the brilliant Foreign Minister of Great Britain, and James Monroe, the President of the United States.

8. A Freehand for England in Egypt set off Against a Freehand for France in Morocco

Article 1. The Government of his Britannic Majesty declares that it has not the intention of changing the political state of Egypt.

On its side, the Government of the French Republic declares that it will not impede the action of England in this country by demanding that a term should be fixed for the British occupation or in any other way, and that it gives its adhesion to the draft of the Khedivial Decree which is appended to the present document, and which contains the guarantees considered necessary for the safeguard of the interests of the holders of the Egyptian Debt, but on condition that after the enforcement of the Decree no modification will be allowed to be introduced without the assent of the signatory Powers to the Convention of London of 1885.

It is agreed that the general direction of Egyptian antiquities will continue to be, as in the past, entrusted to a French *savant*. The French schools in Egypt will continue to enjoy that same liberty as in the past.

Article 2. The Government of the French Republic declares that it has not the intention of changing the political state of Morocco.

On its side, the Government of his Britannic Majesty recognises that it appertains to France, notably as the Power co-terminous to Morocco over a vast area, to watch over the tranquillity of this country, and to lend it her assistance for all administrative, economic, financial, and Military reforms which it requires.

It declares that it will not impede the action of France in this respect, with the reservation that this action will leave intact the rights which, in virtue of Treaties, Conventions, and usage, Great Britain enjoys in Morocco, including the right to engage in coasting trade between Moorish ports from which British ships have benefited since 1901.

Article 3. The Government of his Britannic Majesty, on its side, will respect the rights which, by virtue of Treaties, Conventions and usage, France enjoys in Egypt, including the right of coasting trade accorded to French ships between Egyptian ports.

Article 4. The two Governments, equally attached to the principle of commercial liberty as much in Egypt as in Morocco, declare that they will lend themselves in neither country to any inequality, either in the establishment of Customs duties or other taxes, or in the establishment of railway rates.

The trade of both nations with Morocco and Egypt will enjoy the same treatment as regards transit through French and British Possessions in Africa. An Agreement between the two Governments will regulate the conditions of this transit and will determine the points of entry.

This reciprocal engagement holds good for a period of thirty years. Failing an express denunciation made at least a year in advance, this period will be prolonged for successive periods of five years.

However, the Government of the French Republic in Morocco and the Government of his Britannic Majesty in Egypt reserve to themselves the right of seeing that road, railway, and harbour concessions, etc., are granted under conditions such that the

authority of the State over these great enterprises of general interest remains entire.

Article 5. The Government of his Britannic Majesty declares that it will use its influence in such a way that French officials at present in the Egyptian service shall not be placed in less advantageous conditions than those applied to English Officials in the same service.

The Government of the French Republic, on its side, will not object to similar conditions being conceded to the British officials at present in the Moorish service.

Article 6. In order to insure the free passage of the Suez Canal, the Government of his Britannic Majesty declares its adherence to the stipulations of the Treaty concluded on Oct. 29, 1888, and to their enforcement. The free passage of the Canal being thus guaranteed, the execution of the last sentence of Paragraph 1 and that of Paragraph 2 of Article 8 of this Treaty will remain suspended.

Article 7. In order to insure the free passage of the Straits of Gibraltar, both Governments agree not to allow fortifications or any strategic works to be erected on that part of the Moorish coast between Melilla and the heights which dominate the right bank of the Sebu exclusively. Nevertheless, this arrangement does not apply to the points now occupied by Spain on the Moorish shore of the Mediterranean.

Article 8. The two Governments, animated by their sincerely friendly sentiments for Spain, take into particular consideration the interests she possesses owing to her geographical position, and to her territorial possessions on the Moorish shore of the Mediterranean; and in regard to which the French Government will make some arrangements with the Spanish Government.

The Agreement, which may be reached on this subject between France and Spain, will be communicated to the Government of his Britannic Majesty.

Article 9. The two Governments agree to lend each other the support of their Diplomacy for the execution of the clauses of the present Declaration relative to Egypt and Morocco.

In witness whereof his Excellency the Ambassador of the French Republic to his Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, and the Principal Secretary of State for Foreign Affairs of his Britannic Majesty, duly authorised for that purpose, have signed the present Declaration and have affixed their seals to it. — (*Agreement between Great Britain and France, April 8, 1904.*)

9. Dominion over the Air

Report of the Committee on Aviation of the International Law Association, 1913

Owing to the somewhat late date at which the Committee was finally constituted and the Convener nominated, it has not been possible to send out any *Questionnaire*, and the labours of the Committee have therefore been confined to an examination of the usage of nations and of the views, so far as possible, already pronounced of various leading jurists in reference to the law of the air space in different countries, with a view to seeing if any general principle can be arrived at for laying down the basis of an international convention or code, or if it would be more practical for purposes of an international code to consider the question from the point of view only of the usage of the air space.

Now in considering the question of an international code of the air — that is of the air space — it is certain that no satisfactory result can ensue unless a clear agreement is first come to as to the fundamental basis on which that code is to be built up.

This basis has not yet been agreed, a large number of divergent views having been put forward and ably supported by various schools of jurists in different countries.

The first point which naturally arises for consideration is: To whom does the air space over a subjacent State belong? or, as of what nature is such air space to be considered? for it is in the answer to this that a solution of the difficulty is likely to be found.

On this point, broadly speaking, there are two main schools of thought:

1. Those who maintain that the air space is of its nature free; this theory being that of the freedom of the air space.
2. Those who maintain the theory of the sovereignty of the subjacent State in the air space above its territory.

The first school may again be divided into partisans of:

(*a*) Air freedom without restriction.
(*b*) Air freedom restricted by some special rights (not limited as regards height) of the subjacent State.
(*c*) Air freedom restricted by a territorial zone.

Those who maintain the sovereignty theory may also be subdivided into partisans of:

(*a*) Full sovereignty without any restriction.
(*b*) Full sovereignty restricted by the right of innocent passage for aerial navigation.
(*c*) Full sovereignty up to a limited height only.

The various parties holding these separate views have never yet come to any agreement between themselves.

It is for this reason that Dr. Fauchille, who for the rest is an ardent partisan of the freedom theory, although he would reserve to the subjacent State the rights necessary for its preservation, has suggested that the most practical way of solving the difficulty is simply to deal with the right of "usage" of the air space without laying down any proposition as to sovereignty or otherwise in the air space.

We have every desire to facilitate an agreement as to usage, but we doubt whether any agreement can be practical which is based on an avoidance of the real point at issue. We therefore think it right to place on record the opinion we have formed on that point.

Now if the several views above mentioned put forward by the various groups of writers who are partisans of air freedom are analysed we are at once struck by the fact that nearly all

of them admit that the subjacent State has certain rights necessary for its protection, and that of its inhabitants and their property, and that the argument for air freedom is a purely academic one based on the principle that the air (not the air space — hence much confusion of thought) is free and not susceptible of appropriation. And if the reasons in support of the air freedom are examined a little more closely it will be found that, though they also make an appeal on what are considered practical considerations of modern needs of international intercourse, they are largely founded on the fear that, unless freedom is asserted and conceded, States may close, or attempt to close, their atmosphere to air traffic. For reasons which are presently stated we do not apprehend that any such result will follow from the acceptance of the principle of air sovereignty.

The *Comité Juridique International d'Aviation* at its Paris Congress held in May, 1911, and the *Institut de Droit International* at its Madrid meeting in 1911 have adopted the following resolution on the subject:

> "Aerial circulation is free save the right of subjacent States to take certain measures to be determined with a view to their own security and that of the persons and property of their inhabitants."

When, however, this is examined it does not really carry the matter much further and does not appear to us to provide any practical solution of the difficulty.

If the "certain measures" which a subjacent State may take are to be determined on its own sole authority and discretion the resolution gives power which does not in fact stop short of absolute sovereignty; but if the "measures" which may be taken are only to be such as are to be agreed between States or such as may be held by some tribunal to be necessary, then confusion and conflict seem unavoidable.

The adoption of the principle of free circulation seems to us, therefore, necessarily to lead to a code which must be full of exceptions and must create endless difficulties without any corresponding advantage.

On the general question an examination of recent discussions has convinced us that the opinion of statesmen and jurists is more and more coming to accept the view of full sovereignty.

And if we turn to the more important consideration of the usage of nations we find that it is consistent only with the same view. Legislation in those countries where legislation has taken place is based on the principle of full sovereignty.

The English Aerial Navigation Acts, 1911 and 1913 assume full sovereign rights, and recent legislation in France and Russia rests on the same assumption: while the Franco-German Convention regulating air traffic, which is stated in the Press to have been recently concluded, admits the same principle in "authorising" civil aerial circulation in each country subject to certain conditions, and in allowing to each country the right of making such regulations as it pleases relative thereto.

Further, the law of private rights of most civilised countries confers property, with certain restrictions in some cases, in the air space above the land of the landowner. It is a rule of the English Common Law, which also obtains generally in the United States of America. It is embodied in the Code Napoléon, in the Codes of Germany, Switzerland, Italy, the Netherlands, Belgium, Spain, Portugal, Austria, Japan, Turkey and in the Statutes of at least one (Connecticut) of the United States of America. This shows that the principle of State sovereignty over the whole air space has been generally recognised by civilised nations, for of course the admission of the rights of private owners "usque ad coelum" involves the assertion of State sovereignty to the same extent.

It appears to the Committee impossible to contend that according to existing International Law the air space is free; nor do they think that States would be willing to accept or to act on that view of the law. But they are of opinion that subject to such safeguards as subjacent States may think it right to impose, aerial navigation should be permitted as a matter of comity.

There is no reason to anticipate that States will interfere with the passage of foreign airships through the air above their

territories in an unreasonable manner, any more than they have interfered with the passage of foreign vehicles through their territories or of foreign vessels through their territorial waters. Indeed any action of this character must necessarily be prevented by considerations of reciprocal interest.

The Committee therefore submit the following resolutions: —

1. It is the right of every State to enact such prohibitions, restrictions, and regulations as it may think proper in regard to the passage of air craft through the air space above its territories and territorial waters.
2. Subject to this right of subjacent States liberty of passage of air craft ought to be accorded freely to the air craft of every nation.

Dr. E. von Hofmannsthal while agreeing generally with these resolutions, prefers to adopt the principle of full sovereignty restricted by the right of innocent passage, as he considers that the words "as it may think proper" in the first of the above resolutions might be open to abuse, and that it would therefore be preferable to limit the regulations to such as are "necessary for the protection and welfare of the subjacent State and its inhabitants."

Certain members of the Committee, notably Drs. Fauchille and Karl Strupp and Professors Henry-Coüannier and Niemeyer, have expressed themselves as unable to agree with this Report or the Resolutions. They prefer to adhere to the suggestion of "aerial circulation" on the lines of the Resolutions of the *Institut de Droit International* and *Comité Juridique International d'Aviation* above referred to. Professor Henry-Coüannier considers that the fundamental basis of any International Code should be "Liberty of innocent aerial circulation subject to certain limited powers to be conceded to subjacent States," but without admitting any "rights" as of course in these latter.

Pending the decision of the Association as to the basis of the International Code to be studied, we have not proceeded further with it, and for this reason we have not touched upon Mr. Coüannier's paper upon "Epaves," but we recommend that

the Committee be continued for a further Report to be submitted at the next meeting of this Association.

NOTE. — The resolutions of the Committee were carried by 21 to 2. But of course they have no binding power. Private individuals cannot legislate for nations, though wise statesmen will always treat with respect the opinion of a strong body of experts. At present there is a tendency among states to regard the space above their territories as a possession with regard to which they can make use of sovereign power in the same sense and to the same extent as they exercise it over their land and territorial waters. If this view prevails it will be necessary to guard carefully by general agreement against a denial of access on frivolous grounds to innocent air craft of foreign nationality.

10. Conditions of Occupation

EXTRACT FROM THE GENERAL ACT OF THE WEST AFRICAN CONFERENCE OF 1884–1885

Article 34

Any Power which henceforth takes possession of a tract of land on the coasts of the African Continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

Article 35

The Signatory Powers of the present Act recognize the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African Continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon.

NOTE. — It will be seen that Article 34 refers to protectorates as well as territories acquired in full sovereignty while Article 35 omits any mention of the former. Moreover both refer to portions of the African Continent only. But the tendency of opinion and practice since 1885 has been to remove all limitations on the application of the principles laid

down in the Declaration. States are now expected to notify all new acquisitions to territory hitherto accounted *res nullius*, and to keep rudimentary order in their protectorates as well as in districts over which they claim sovereign power.

11. Cession by a Mixture of Forced Gift and Sale

THE PHILIPPINE ISLANDS

On the 10th of December, 1898, the treaty of peace between the United States and Spain was signed. It provided, among other things, that Spain should cede to the United States the archipelago known as the Philippine Islands, that the United States should pay to Spain the sum of twenty million of dollars and that the civil rights and political status of the native inhabitants of the territories thus ceded to the United States should be determined by the Congress. The treaty was ratified by the Senate on the 6th of February, 1899, and by the Government of Spain on the 19th of March following. The ratifications were exchanged on the 11th of April and the treaty publicly proclaimed. On the 2nd of March the Congress voted the sum contemplated by the treaty, and the amount was paid over to the Spanish Government on the 1st of May.

In this manner the Philippines came to the United States. The islands were ceded by the Government of Spain, which had been in undisputed possession of them for centuries. They were accepted not merely by our authorized commissioners in Paris, under the direction of the Executive, but by the constitutional and well-considered action of the representatives of the people of the United States in both Houses of Congress. — (*Message of President McKinley, Dec. 5, 1899.*)

12. Cession after an Unsuccessful War

TREATY OF PEACE BETWEEN TURKEY AND THE BALKAN ALLIES, SIGNED AT LONDON, MAY 30, 1913

Article 1

Upon the exchange of ratifications of the present treaty there shall be peace and amity between His Imperial Majesty

the Sultan of Turkey, on the one hand, and Their Majesties the Allied Sovereigns, on the other hand, as well as between their heirs and successors, their respective states and subjects for ever.

Article 2

His Imperial Majesty the Sultan cedes to Their Majesties the Allied Sovereigns all the territories of his Empire on the continent of Europe west of a line drawn from Enos on the Aegean Sea to Midia on the Black Sea, with the exception of Albania.

The exact line of the frontier shall be determined by a commission.

Article 3

His Imperial Majesty the Sultan and Their Majesties the Allied Sovereigns declare that they submit to His Majesty the Emperor of Germany, His Majesty the Emperor of Austria and King of Hungary, the President of the French Republic, His Majesty the King of Great Britain and Ireland and Emperor of India, His Majesty the King of Italy, and His Majesty the Emperor of all the Russias the matter of arranging the delimitation of the frontiers of Albania and all other questions concerning Albania.

Article 4

His Imperial Majesty the Sultan declares that he cedes to Their Majesties the Allied Sovereigns the Island of Crete, and renounces in their favour all rights of sovereignty and all other rights which he possessed over that island.

Article 5

His Imperial Majesty the Sultan and Their Majesties the Allied Sovereigns declare that they entrust to His Majesty the Emperor of Germany, His Majesty the Emperor of Austria and King of Hungary, the President of the French Republic, His Majesty the King of Great Britain and Ireland and Emperor of India, and His Majesty the Emperor of all the Russias the matter of passing upon the title to all the Ottoman islands in

the Aegean Sea (except the Island of Crete) and to the Peninsula of Mount Athos.

Article 6

His Imperial Majesty the Sultan and Their Majesties the Allied Sovereigns declare that they refer the matter of settling questions of a financial nature resulting from the war which is ending, and from the above-mentioned cessions of territory, to the international commission convened at Paris, to which they have sent their representatives.

Article 7

Questions concerning prisoners of war, questions of jurisdiction, of nationality and of commerce shall be settled by special conventions. — (*Supplement to the American Journal of International Law, Jan. 1914*, pp. 12–13.)

13. A Modern Protectorate

PROTECTORATE TREATY BETWEEN FRANCE AND MOROCCO, 1912

The Government of the French Republic and the Government of His Majesty the Sultan, desirous of inaugurating a regular *régime* in Morocco based upon internal order and general security, making it possible to introduce reforms and to insure the economic development of the country, have agreed upon the following:

Article I

The Government of the French Republic and His Majesty the Sultan have agreed to establish in Morocco a new *régime* admitting of the administrative, juridical, educational, economic, financial and military reforms which the French Government may deem useful to be introduced within the Moroccan territory.

This *régime* shall safeguard the religious status, the respect and traditional prestige of the Sultan, the exercise of the Mohammedan religion and of the religious institutions and in par-

ticular those of the *habous*. It shall admit of the organization of a reformed Shereefian Makhzen.

The Government of the Republic will come to an understanding with the Spanish Government regarding the interests which this Government has in virtue of its geographical position and territorial possessions on the Moroccan Coast.

In like manner, the City of Tangiers shall retain the distinctive characteristic for which it has been known and which will determine its municipal organization.

Article II

His Majesty the Sultan consents that henceforth the French Government, after it shall have notified the Makhzen, may proceed to such military occupation of the Moroccan territory as it may deem necessary for the maintenance of good order and the security of commercial transactions, and to exercise every police supervision on land and within the Moroccan waters.

Article III

The Government of the Republic pledges itself to lend constant support to His Shereefian Majesty against all dangers which might threaten his person or throne, or endanger the tranquillity of his states. The same support shall be given the heir to the throne and his successors.

Article IV

Such measures as the new *régime* of the protectorate may require shall be established by edict, upon the proposal of the French Government, by His Shereefian Majesty or the authorities to whom he may have delegated his power. The same process shall be observed in the matter of new regulations and of modifications of the existing regulations.

Article V

The French Government shall be represented near His Shereefian Majesty by a resident commissioner general, representa-

tive of all the powers of the Republic in Morocco, who shall attend to the execution of the present agreement.

The resident commissioner general shall be the sole intermediary between the Sultan and foreign representatives and in the relations which these representatives maintain with the Moroccan Government. In particular, he shall have charge of all matters relating to foreigners in the Shereefian Empire.

He shall have the power to approve and promulgate, in the name of the French Government, all the decrees issued by His Shereefian Majesty.

Article VI

The diplomatic and consular agents of France shall be charged with the representation and protection of Moroccan subjects and interests abroad.

His Majesty the Sultan pledges himself not to conclude any act of an international nature without the previous approval of the French Republic.

Article VII

The Government of the French Republic and the Government of His Shereefian Majesty reserve unto themselves to determine by mutual agreement the bases for a financial reorganization which, while respecting the rights conferred upon bondholders of the Moroccan public loans, shall make it possible to guarantee the engagements of the Shereefian treasury and to collect regularly the revenues of the empire.

Article VIII

His Shereefian Majesty declares that in future, he will refrain from contracting, directly or indirectly, any public or private loan, and from granting in any form whatever any concession without the authorization of the French Government. — (*Supplement to the American Journal of International Law*, July, 1912, pp. 207–209.)

14. Spheres of Influence

Anglo-German Agreement of 1890

Article I

In East Africa the sphere in which the exercise of influence is reserved to Germany is bounded —

1. To the north by a line which, commencing on the coast at the north bank of the mouth of the Riva Umba, runs direct to Lake Jipé; passes thence along the eastern side and round the northern side of the lake, and crosses the River Lumé; after which it passes midway between the territories of Taveita and Chagga, skirts the northern base of the Kilimanjaro range, and thence is drawn direct to the point on the eastern side of Lake Victoria Nyanza which is intersected by the 1st parallel of south latitude; thence, crossing the lake on that parallel, it follows the parallel to the frontier of the Congo Free State, where it terminates.

It is, however, understood that, on the west side of the lake, the sphere does not comprise Mount Mfumbiro. If that mountain shall prove to lie to the south of the selected parallel, the line shall be deflected so as to exclude it, but shall, nevertheless, return so as to terminate at the above-named point.

2. To the south by a line which, starting on the coast at the northern limit of the Province of Mozambique, follows the course of the River Rovuma to the point of confluence of the Msinje; thence it runs westward along the parallel of that point till it reaches Lake Nyassa; thence striking northward, it follows the eastern, northern, and western shores of the lake to the northern bank of the mouth of the River Songwe; it ascends that river to the point of its intersection by the 33rd degree of east longitude; thence it follows the river to the point where it approaches most nearly the boundary of the geographical Congo Basin defined in the 1st Article of the Act of Berlin, as marked in the Map attached to the 9th Protocol of the Conference.

From that point it strikes direct to the above-named boundary; and follows it to the point of its intersection by the 32nd degree of east longitude; from which point it strikes direct to the point of confluence of the northern and southern branches of the River Kilambo, and thence follows that river till it enters Lake Tanganyika.

The course of the above boundary is traced in general accordance with a Map of the Nyassa-Tanganyika Plateau, officially prepared for the British Government in 1889.

3. To the west by a line which, from the mouth of the River Kilambo to the 1st parallel of south latitude, is conterminous with the Congo Free State.

The sphere in which the exercise of influence is reserved to Great Britian is bounded —

1. To the south by the above-mentioned line running from the mouth of the River Umba to the point where the 1st parallel of south latitude reaches the Congo Free State. Mount Mfumbiro is included in the sphere.

2. To the north by a line commencing on the coast at the north bank of the mouth of the River Juba; thence it ascends that bank of the river and is conterminous with the territory reserved to the influence of Italy in Gallaland and Abyssinia, as far as the confines of Egypt.

3. To the west by the Congo Free State and by the western watershed of the basin of the Upper Nile.

Article II

In order to render effective the delimitation recorded in the preceding Article, Germany withdraws in favour of Great Britain her Protectorate over Witu. Great Britain engages to recognize the sovereignty of the Sultan of Witu over the territory extending from Kipini to the point opposite the Island of Kwyhoo, fixed as the boundary in 1887.

Germany also withdraws her Protectorate over the adjoining coast up to Kismayu, as well as her claims to all other territories on the mainland, to the north of the River Tana, and to the Islands of Patta and Manda.

Article III

In South-West Africa the sphere in which the exercise of influence is reserved to Germany is bounded:—

1. To the south by a line commencing at the mouth of the Orange River, and ascending the north Bank of that River to the point of its intersection by the 20th degree of east longitude.

2. To the east by a line commencing at the above-named point and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude, it runs eastward along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the River Chobe; and descends the centre of the main channel of that river to its junction with the Zambesi, where it terminates.

It is understood that under this arrangement Germany shall have free access from her Protectorate to the Zambesi by a strip of territory which shall at no point be less than 20 English miles in width.

The sphere in which the exercise of influence is reserved to Great Britain is bounded to the west and north-west by the above-mentioned line. It includes Lake Ngami.

The course of the above boundary is traced in general accordance with a Map officially prepared for the British Government in 1889.

The delimitation of the southern boundary of the British territory of Walfish Bay is reserved for arbitration, unless it shall be settled by the consent of the two Powers within two years from the date of the conclusion of this Agreement. The two Powers agree that, pending such settlement, the passage of the subjects and the transit of goods of both Powers through the territory now in dispute shall be free; and the treatment of their subjects in that territory shall be in all respects equal. No dues shall be levied on goods in transit. Until a settlement shall be effected the territory shall be considered neutral.

Article IV

In West Africa —

1. The boundary between the German Protectorate of Togo and the British Gold Coast Colony commences on the coast at the marks set up after the negotiations between the Commissioners of the two countries of the 14th and 28th of July, 1886; and proceeds direct northward to the 6° 10′ parallel of north latitude; thence it runs along that parallel westwards till it reaches the left bank of the River Aka; ascends the mid-channel of the river to the 6° 20′ parallel of north latitude; runs along that parallel westward to the right bank of the River Dchawe or Shavoe; follows that bank of the river till it reaches the parallel corresponding with the point of confluence of the river Deine with the Volta; it runs along that parallel westward till it reaches the Volta; from that point it ascends the left bank of the Volta till it arrives at the neutral zone established by the Agreement of 1888, which commences at the confluence of the River Dakka with the Volta.

Each Power engages to withdraw immediately after the conclusion of this Agreement all its officials and employés from territory which is assigned to the other Power by the above delimitation.

2. It having been proved to the satisfaction of the two Powers that no river exists on the Gulf of Guinea corresponding with that marked on Maps as the Rio del Rey, to which reference was made in the Agreement of 1885, a provisional line of demarcation is adopted between the German sphere in the Cameroons and the adjoining British sphere, which, starting from the head of the Rio del Rey creek, goes direct to the point, about 9° 8′ of east longitude, marked "Rapids" in the British Admiralty Chart.

Article V

It is agreed that no Treaty or Agreement, made by or on behalf of either Power to the north of the River Benué, shall interfere with the free passage of goods of the other Power,

without payment of transit dues, to and from the shores of Lake Chad.

All Treaties made in territories intervening between the Benué and Lake Chad shall be notified by one Power to the other.

Article VI

All the lines of demarcation traced in Articles I to IV shall be subject to rectification by agreement between the two Powers, in accordance with local requirements.

It is specially understood that, as regards the boundaries traced in Article IV, Commissioners shall meet with the least possible delay for the object of such rectification.

Article VII

The two Powers engage that neither will interfere with any sphere of influence assigned to the other by Articles I to IV. One Power will not in the sphere of the other make acquisitions, conclude Treaties, accept sovereign rights or Protectorates, nor hinder the extension of influence of the other.

It is understood that no Companies or individuals subject to one Power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter.

Article VIII

The two Powers engage to apply in all the portions of their respective spheres, within the limits of the free zone defined by the Act of Berlin of 1885, to which the first five Articles of that Act are applicable at the date of the present Agreement, the provisions of those Articles according to which trade enjoys complete freedom; the navigation of the lakes, rivers, and canals, and of the ports on those waters is free to both flags; and no differential treatment is permitted as regards transport or coasting trade; goods of whatever origin are subject to no dues except those, not differential in their incidence, which may be levied to meet expenditure in the interest of trade; no transit dues are permitted; and no monopoly or favour in matters of trade can be granted.

The subjects of either Power will be at liberty to settle freely in their respective territories situated within the free trade zone.

It is specially understood that, in accordance with these provisions, the passage of goods of both Powers will be free from all hindrances and from all transit dues between Lake Nyassa and the Congo State, between Lake Nyassa and Tanganyika, on Lake Tanganyika, and between that lake and the northern boundary of the two spheres.

Article IX

Trading and mineral Concessions, and rights to real property, held by Companies or individuals, subjects of one Power, shall, if their validity is duly established, be recognized in the sphere of the other Power. It is understood that Concessions must be worked in accordance with local laws and regulations.

Article X

In all territories in Africa belonging to, or under the influence of either Power, missionaries of both countries shall have full protection. Religious toleration and freedom for all forms of divine worship and religious teaching are guaranteed.

Article XI

Great Britain engages to use all her influence to facilitate a friendly arrangement, by which the Sultan of Zanzibar shall cede absolutely to Germany his possessions on the mainland comprised in existing Concessions to the German East African Company, and their dependencies, as well as the Island of Mafia.

It is understood that His Highness will, at the same time, receive an equitable indemnity for the loss of revenue resulting from such cession.

Germany engages to recognize a Protectorate of Great Britain over the remaining dominions of the Sultan of Zanzibar, including the Islands of Zanzibar and Pemba, as well as over

the dominions of the Sultan of Witu, and the adjacent territory up to Kismayu, from which her Protectorate is withdrawn. It is understood that if the cession of the German coast has not taken place before the assumption by Great Britain of the Protectorate of Zanzibar, Her Majesty's Government will, in assuming the Protectorate, accept the obligation to use all their influence with the Sultan to induce him to make the cession at the earliest possible period in consideration of an equitable indemnity.

Article XII

1. Subject to the assent of the British Parliament, the sovereignty over the Island of Heligoland, together with its dependencies, is ceded by Her Britannic Majesty to His Majesty the Emperor of Germany.

2. The German Government will allow to all persons natives of the territory thus ceded the right of opting for British nationality by means of a declaration to be made by themselves, and, in the case of children under age, by their parents or guardians, which must be sent in before the 1st of January, 1892.

3. All persons natives of the territory thus ceded, and their children born before the date of the signature of the present Agreement, are free from the obligation of service in the military and naval forces of Germany.

4. Native laws and customs now existing will, as far as possible, remain undisturbed.

5. The German Government binds itself not to increase the Customs Tariff at present in force in the territory thus ceded until the 1st January, 1910.

6. All rights to property which private persons or existing Corporations have acquired in Heligoland in connection with the British Government are maintained; obligations resulting from them are transferred to His Majesty the Emperor of Germany. It is understood that the above term, "rights to property," includes the right of signalling now enjoyed by Lloyd's.

7. The rights of British fishermen with regard to anchorage in all weathers, to taking in provisions and water, to making

repairs, to transshipment of goods, to the sale of fish, and to the landing and drying of nets, remain undisturbed.

15. Assignment of Lease of Territory

PORT ARTHUR

The Imperial Russian Government transfer and assign to the Imperial Government of Japan, with the consent of the Government of China, the lease of Port Arthur, Talien and adjacent territory and territorial waters and all rights, privileges, and concessions connected with or forming part of such lease, and they also transfer and assign to the Imperial Government of Japan all public works and properties in the territory affected by the above-mentioned lease. The two High Contracting Parties mutually engage to obtain the consent of the Chinese Government mentioned in the foregoing stipulation. — (*Article V, of Treaty of Portsmouth between Russia and Japan, 1905.*)

16. Assignment of the Island of Cyprus to be occupied and administered by Great Britain

A. *Convention of 1878. Assignment of Cyprus*

If Batoum, Ardahan, Kars, or any of them shall be retained by Russia, and if any attempt shall be made at any future time by Russia to take possession of any further territories of His Imperial Majesty the Sultan in Asia, as fixed by the Definitive Treaty of Peace, England engages to join His Imperial Majesty the Sultan in defending them by force of arms.

In return, His Imperial Majesty the Sultan promises to England to introduce necessary reforms to be agreed upon later between the two Powers, into the government, and for the protection, of the Christian and other subjects of the Porte in these territories; and in order to enable England to make necessary provision for the executing her engagement, His Imperial Majesty the Sultan further consents to assign the Island of Cyprus to be occupied and administered by England.

B. *Conditions of the Assignment, contained in an* Annexe *to the above Convention*

It is understood between the two High Contracting Parties that England agrees to the following conditions relating to her occupation and administration of the Island of Cyprus: —

I. That a Mussulman religious Tribunal (Mehkéméi Shéri) shall continue to exist in the island, which will take exclusive cognizance of religious matters, and of no others, concerning the Mussulman population of the island.

II. That a Mussulman resident in the Island shall be named by the Board of Pious Foundations in Turkey (Evkraf) to superintend, in conjunction with a Delegate to be appointed by the British Authorities, the administration of the property, funds, and lands belonging to mosques, cemeteries, Mussulman schools, and other religious establishments existing in Cyprus.

III. That England will pay to the Porte whatever is the present excess of revenue over expenditure in the island; this excess to be calculated upon and determined by the average of the last five years, stated to be 22,936 purses, to be duly verified hereafter, and to the exclusion of the produce of State and Crown lands let or sold during that period.

IV. That the Sublime Porte may freely sell and lease lands and other property in Cyprus belonging to the Ottoman Crown and State (Arazii Miriyé vé Emlaki Houmayoun) the produce of which does not form part of the revenue of the island referred to in Article III.

V. That the English Government, through their competent authorities, may purchase compulsorily, at a fair price, land required for public improvements, or for other public purposes, and land which is not cultivated.

VI. That if Russia restores to Turkey Kars and the other conquests made by her in Armenia during the last war, the Island of Cyprus will be evacuated by England, and the Convention of the 4th of June, 1878, will be at an end.

17. Assignment of Bosnia and Herzegovina to be occupied and administered by Austria

The provinces of Bosnia and Herzegovina shall be occupied and administered by Austria-Hungary. The Government of Austria-Hungary, not desiring to undertake the administration of the Sandjak of Novi-Bazar, which extends between Servia and Montenegro in a south-easterly direction to the other side of Mitrovitza, the Ottoman Administration will continue to exercise its functions there. Nevertheless, in order to assure the maintenance of the new political state of affairs, as well as freedom and security of communications, Austria-Hungary reserves the right of keeping garrisons and having military and commercial roads in the whole of this part of the ancient Vilayet of Bosnia. To this end the Governments of Austria-Hungary and Turkey reserve to themselves to come to an understanding on the details. — (*Article XXV, of the Treaty of Berlin, 1876.*)

18. Austro-Hungarian Imperial Rescript of Oct. 7th, 1908, assuming Full Sovereignty over Bosnia and Herzegovina

We, Francis Joseph I, Emperor of Austria, King of Bohemia, and Apostolic King of Hungary to the inhabitants of Bosnia and the Herzegovina: —

When a generation since our troops crossed the borders of your lands you were assured that they came not as foes but as friends, with the firm will to remedy the evils from which your Fatherland had suffered so severely for many years.

This word, given at a grave moment, has been honestly kept. It has been the constant endeavour of our Government to lead the country in calm legality, by ceaseless activity, towards a happier future.

To our great joy we can say that the seed then scattered in the furrows of a troubled soil has richly thriven. You yourselves must feel it a boon that order and security have replaced violence and oppression, that trade and traffic are constantly extending, that the moralizing influence of increased education

has been brought to bear, and that under the shield of an orderly administration every man may enjoy the fruits of his work.

It is the earnest duty of us all to march ceaselessly forward along this path. With this goal before our eyes we deem the moment come to give the inhabitants of the two lands a new proof of our trust in their political maturity. In order to raise Bosnia and the Herzegovina to a higher level of political life we have resolved to grant to both lands constitutional institutions that take account of prevailing conditions and general interests so as to create a legal basis for the representation of their wishes and needs. You shall henceforth have a voice when decisions are taken concerning the affairs of your home which, as hitherto, will have a separate administration.

But the indispensable premise for the introduction of this provincial Constitution is the creation of a clear and unambiguous juridical position for the two lands.

For this reason, and also remembering the ties that existed of yore between our glorious ancestors on the Hungarian Throne and these lands, we extend the rights of our Sovereignty to Bosnia and the Herzegovina and it is our will that the order of succession of our House be applied to these lands also.

The inhabitants of the two lands thus share all the benefits which a lasting confirmation of the present connexion can offer. The new order of things will be a pledge that civilization and welfare will find a sure place in your homes.

Inhabitants of Bosnia and the Herzegovina:—

Among the many cares that surround our Throne, care for your material and spiritual welfare shall in future also not be the least. The exalted idea of equal right for all before the law, a share in the legislation and administration of provincial affairs, equal protection for all religious creeds, for languages and social idiosyncracies — all these high possessions shall you enjoy in full measure. The freedom of the individual and the welfare of the whole will be the lodestar of our Government in the two lands. You will assuredly show yourselves worthy of the trust placed in you by attachment and loyalty to us and to our House. And thus we hope that the noble harmony between Prince and

people, that dearest pledge of all State progress, will ever accompany us upon our common path.

FRANCIS JOSEPH

— (*The Times*, Oct. 7th, 1908.)

19. Excerpts from the Convention of 1906 between Great Britain and France, establishing Joint Sovereignty in the New Hebrides

Article I

Status

(1) The Group of the New Hebrides, including the Banks and Torres Islands, shall form a region of joint influence, in which the subjects and citizens of the two Signatory Powers shall enjoy equal rights of residence, personal protection, and trade, each of the two Powers retaining jurisdiction over its subjects or citizens, and neither exercising a separate control over the Group.

(2) The subjects or citizens of other Powers shall enjoy the same rights and shall be subject to the same obligations as British subjects or French citizens. They must choose within six months betewen the legal systems of one of the two Powers. Failing such choice, the High Commissioners mentioned in Article II. or their Delegates shall decide under which system they shall be placed.

(3) In all matters not contrary to the provisions of the present Convention, or the regulations made thereunder, the subjects and citizens of the two Signatory Powers and the subjects and citizens of other Powers shall, within the New Hebrides, remain subject to the fullest extent to the laws of their respective countries.

(4) The two Signatory Powers undertake not to erect Fortifications in the Group and not to establish penal settlements of any kind.

Article II

Local Authorities — Police

(1) The Signatory Powers shall be represented in the Group by two High Commissioners, one appointed by His Britannic

Majesty's Government, the other by the Government of the French Republic.

(2) The High Commissioners shall each be assisted by a Resident Commissioner, to whom they shall delegate their respective powers in so far as they consider it expedient, and who shall represent them in the Group when they do not reside there.

(3) The High Commissioners or their Delegates shall be provided with a police force of sufficient strength to guarantee effectively the protection of life and property.

(4) The force shall be divided into two divisions of equal strength. Each of these two divisions shall be under the orders of one of the two Resident Commissioners, and shall in no case be employed otherwise than in conformity with the principles laid down by the present Convention.

(5) When it is necessary to employ some or all of both divisions of the force in conformity with the present Convention or of the regulations framed for its execution, the force shall be under the joint direction of the High Commissioners or their Delegates.

Article IV

Public Services Undertaken in Common

(1) The following public services shall be undertaken in common: — Police, posts and telegraphs, public works, ports and harbours, buoys and lighthouses, public health, finance.

(2) These public services shall be organized and directed by the High Commissioners and their Delegates jointly.

(3) Special postage stamps shall be issued for the New Hebrides, in conformity with the International Postal Convention.

(4) English and French money and bank-notes authorized by either Power shall be legal tender in the Group.

Article V

Financial Provisions

(1) Each of the two Signatory Powers shall defray the expenses of its own administration in the Group.

(2) The expenses of the Joint Court and of the public services undertaken in common shall be defrayed out of local taxes, to be imposed by the High Commissioners jointly, the receipts from fines and from the postal service, and all other revenue of a joint character.

In the event of the revenue from the above proving insufficient, the two Signatory Powers shall each pay one-half of the deficit.

Article X

Composition

(1) A Joint Court shall be established, consisting of three Judges, of whom one shall be President. A fourth officer shall act as Public Prosecutor, and shall have charge of the preliminary inquiries.

The Court shall be provided with a Registrar and the requisite staff.

(2) Each of the two Governments shall appoint one Judge.

His Majesty the King of Spain shall be invited to appoint the third, who shall be President of the Court. The officer who acts as Public Prosecutor shall be appointed in the same manner. Neither of these two officers shall be a British subject or a French citizen.

The Registrar and the staff shall be appointed by the President.

(3) If either of the two Governments considers that it has a cause of complaint against the President of the Joint Court, or the officer acting as Public Prosecutor, it shall inform the other Government.

If both Governments agree, they shall request His Majesty the King of Spain to appoint another person to fill the post.

If they disagree, His Majesty the King of Spain shall determine whether the complaint is justified and whether the officer complained of shall be retained or superseded.

Article XII

Jurisdiction

The Joint Court shall have jurisdiction: —

(1) In civil (including commercial) cases:

(A) Over all suits respecting land in the Group; (B) Over suits of every kind between natives and non-natives.

(2) In police and criminal cases:

Over every offence or crime committed by natives against non-natives.

(3) Generally:

Over the particular offences constituted by the present Convention or the regulations framed for the purpose of carrying it out.

20. The Navigation of the Dardanelles and the Bosphorus

A

Convention of 1856 between Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey

Article I. His Majesty the Sultan, on the one part, declares that he is firmly resolved to maintain for the future the principle invariably established as the ancient rule of his Empire, and in virtue of which it has, at all times, been prohibited for the ships of war of foreign Powers to enter the Straits of the Dardanelles and of the Bosphorus; and that, so long as the Porte is at peace, His Majesty will admit no foreign ship of war into the said Straits.

And Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, the Emperor of the French, the King of Prussia, the Emperor of all the Russias, and the King of Sardinia, on the other part, engage to respect this determination of the Sultan, and to conform themselves to the principle above declared.

Article II. The Sultan reserves to himself, as in past times, to deliver firmans of passage for light vessels under flag of war,

which shall be employed, as is usual, in the service of the Missions of foreign Powers.

Article III. The same exception applies to the light vessels under the flag of war which each of the Contracting Powers is authorized to station at the mouths of the Danube in order to secure the execution of the regulations relative to the liberty of that river, and the number of which is not to exceed two for each Power.

B

Extract from the Treaty of 1871 between Austria, France, Germany, Great Britain, Italy, Russia, and Turkey

Article II. The principle of the closing of the Straits of the Dardanelles and the Bosphorus, such as it has been established by the separate Convention of March 30, 1856, is maintained, with power to His Imperial Majesty the Sultan to open the said Straits in time of peace to the vessels of war of friendly and allied Powers, in case the Sublime Porte should judge it necessary in order to secure the execution of the stipulations of the Treaty of Paris of March 30, 1856.

21. Convention of 1888 for the Neutralization of the Suez Canal, signed by Austria, France, Germany, Great Britain, Italy, Holland, Russia, Spain, and Turkey

Article I

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace.

The Canal shall never be subjected to the exercise of the right of blockade.

Article II

The High Contracting Parties, recognizing that the Fresh-Water Canal is indispensable to the Maritime Canal, take note

of the engagements of His Highness the Khedive towards the Universal Suez Canal Company as regards the Fresh-Water Canal, which engagements are stipulated in a Convention bearing date the 18th March, 1863, containing an *exposé* and four Articles.

They undertake not to interfere in any way with the security of that Canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

Article III

The High Contracting Parties likewise undertake to respect the plant, establishments, buildings, and works of the Maritime Canal and of the Fresh-Water Canal.

Article IV

The Maritime Canal remaining open in time of war as a free passage, even to the ships of war of belligerents, according to the terms of Article I of the present Treaty, the High Contracting Parties agree that no right of war, no act of hostility nor any act having for its object to obstruct the free navigation of the Canal, shall be committed in the Canal and its ports of access, as well as within a radius of 3 marine miles from those ports, even though the Ottoman Empire should be one of the belligerent Powers.

Vessels of war of belligerents shall not revictual or take in stores in the Canal and its ports of access, except in so far as may be strictly necessary. The transit of the aforesaid vessels through the Canal shall be effected with the least possible delay, in accordance with the Regulations in force, and without any other intermission than that resulting from the necessities of the service.

Their stay at Port Said and in the roadstead of Suez shall not exceed twenty-four hours, except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of twenty-four hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile Power.

Article V

In time of war belligerent Powers shall not disembark nor embark within the Canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the Canal, men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

Article VI

Prizes shall be subjected in all respects, to the same rules as the vessels of war of belligerents.

Article VII

The Powers shall not keep any vessel of war in the waters of the Canal (including Lake Timsah and the Bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Said and Suez, the number of which shall not exceed two for each Power.

This right shall not be exercised by belligerents.

Article VIII

The Agents in Egypt of the Signatory Powers of the present Treaty shall be charged to watch over its execution. In case of any event threatening the security of the free passage of the Canal, they shall meet on the summons of three of their number, under the presidency of their Doyen, in order to proceed to the necessary verifications. They shall inform the Khedivial Government of the danger which they may have perceived, in order that that Government may take proper steps to insure the protection and the free use of the Canal. Under any circumstances they shall meet once a year to take note of the due execution of the Treaty.

The last-mentioned meetings shall take place under the presidency of a Special Commissioner nominated for that purpose by the Imperial Ottoman Government. A Commissioner of

the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman Commissioner.

They shall especially demand the suppression of any work or the dispersion of any assemblage, on either bank of the Canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

Article IX

The Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present Treaty, take the necessary measures for insuring the execution of the said Treaty.

In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary measures to respond to such appeal; shall give notice thereof to the Signatory Powers of the Declaration of London of the 17th March, 1885; and shall if necessary, concert with them on the subject.

The provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which shall be taken in virtue of the present Article.

Article X

Similarly, the provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the Firmans granted, might find it necessary to take for securing by their own forces the defence of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this Article provides, the Signatory Powers of the Declaration of London (March 17th, 1885) shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four Articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think

it necessary to take in order to insure by its own forces the defence of its other possessions situated on the eastern coast of the Red Sea.

Article XI

The measures which shall be taken in the cases provided for by Articles IX and X of the present Treaty shall not interfere with the free use of the Canal. In the same cases, the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

Article XII

The High Contracting Parties, by application of the principle of equality as regards the free use of the Canal, a principle which forms one of the bases of the present Treaty, agree that none of them shall endeavour to obtain with respect to the Canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover, the rights of Turkey as the territorial Power are reserved.

Article XIII

With the exception of the obligations expressly provided by the clauses of the present Treaty, the sovereign rights of His Imperial Majesty the Sultan, and the rights and immunities of His Highness the Khedive, resulting from the Firmans, are in no way affected.

Article XIV

The High Contracting Parties agree that the engagements resulting from the present Treaty, shall not be limited by the duration of the Acts of Concession of the Universal Suez Canal Company.

Article XV

The stipulations of the present Treaty shall not interfere with the sanitary measures in force in Egypt.

Article XVI

The High Contracting Parties undertake to bring the present Treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

In witness whereof the respective Plenipotentiaries have signed present Treaty, and have affixed to it the seal of their arms.

NOTE. — Great Britain took an active part in the negotiation of the above Convention, but accompanied her acceptance of it with a reservation of the application of its provisions "in so far as they may not be compatible with the transitory and exceptional condition of things actually existing in Egypt, and may limit the freedom of action of the (British) Government during the period of the occupation of Egypt by the forces of Her Britannic Majesty." But by Article VI of the Agreement of 1904 with France concerning Egypt and Morocco Great Britain receded from this position, and signified her adherence, not only to the provisions of the Convention of 1888, but to their enforcement also. Both parties, however, concurred in the indefinite suspension of the annual meetings provided for by Article VIII of the Convention. (See Part II, No. 8, Article 6, page 51.)

22. The Hay-Pauncefote Treaty of 1901 for the Construction and Neutralization of the Panama Canal

The United States of America and His Majesty, Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries, (Here follow names and descriptions,) Who, having communicated to each other their full powers

which were found to be in due and proper form, have agreed upon the following articles: —

Article I

The High Contracting Parties agree that the present Treaty shall supersede the afore-mentioned Convention of the 19th April, 1850.

Article II

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

Article III

The United States adopts, as the basis of the neutralization of such ship-canal, the following rules, substantially as embodied in the Convention of Constantinople, signed the 29th. October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal

shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal, within three marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time, except in case of distress, and in such case, shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

Article IV

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty. (*Supplement to the American Journal of International Law*, April, 1909, pp. 127–129.)

23. Excerpts from the Hay-Varilla Treaty of 1903 for the Construction and Working of the Panama Canal

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across

the Isthmus of Panama to connect the Atlantic and Pacific oceans, and the Congress of the United States of America having passed an act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a Convention and have accordingly appointed as their Plenipotentiaries, (here follow names and descriptions), who have agreed upon and concluded the following articles: —

Article I

The United States guarantees and will maintain the independence of the Republic of Panama.

Article II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said canal of the width of ten miles extending to the distance of five miles on each side of the centre line of the route of the canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbours adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said canal or of any auxiliary canals or other works necessary and convenient for

the construction, maintenance, operation, sanitation, and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

Article III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which the said lands and waters are located to the entire exclusion of the exercise of the Republic of Panama of any such sovereign rights, power or authority.

Article IV

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the rights to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal.

Article V

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

Article IX

The United States agrees that the ports at either entrance of the canal and the waters thereof, and the Republic of Panama

agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the canal or belonging to or employed by the United States, directly or indirectly in connection with the construction, maintenance, operation, sanitation and protection of the main canal, or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbours of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the canal and for other works pertaining to the canal.

Article X

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the canal, the railways and auxiliary works, tugs and other vessels employed in the service of the canal, store houses, work-shops, offices, quarters for labourers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the canal or railroad and auxiliary works, or their officers or employees situated within the cities of Panama and Colon, and that there

shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, labourers, and other individuals in the service of the canal and railroad and auxiliary works.

Article XIV

As the price of compensation for the rights, powers and privileges granted in this Convention by the Republic of Panama to the United States, the government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this Convention, and also an annual payment during the life of this Convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this article shall be in addition to all other benefits assured to the Republic of Panama under this Convention.

But no delay or difference of opinion under this article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this Convention in all other respects.

Article XVIII

The canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article III of, and in conformity with all the stipulations of, the treaty entered into by the Government of the United States and Great Britain on November 18, 1901. (See page 84.)

Article XIX

The Government of the Republic of Panama shall have the right to transport over the canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged

with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

Article XXIII

If it should become necessary at any time to employ armed forces for the safety or protection of the canal, or of the ships that make use of the same, or the railways and auxiliary works, then the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

Article XXV

For the better performance of the engagements of this Convention and to the end of the efficient protection of the canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States. — (*Supplement of the American Journal of International Law*, April, 1909, pp. 130–139.)

24. Extract from the Panama Canal Act, 1912, of the Congress of the United States

Section 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal: Provided, That no tolls, when prescribed as above, shall be changed, unless six months' notice thereof shall have been given by the President by proclamation. No tolls shall be levied upon vessels engaged in the coast-wise trade of the United States.

Note. — Great Britain maintained that the exemption from tolls thus granted to vessels engaged in the coast-wise trade of the United States was a violation of that paragraph of Article III of the Hay-Pauncefote Treaty of 1901 which stipulates that the Canal shall be open to the vessels "of all nations . . . on terms of entire equality," and forbids discrim-

ination "in respect of the conditions or charges of traffic" (see page 84). It is contended in reply that "all nations" means all nations other than the United States. In order to settle the dispute it was suggested that (1) the last sentence of section 5 of the Panama Canal Act should be repealed, and (2) the question should be referred to Arbitration. In default of one or the other a new difficulty would have arisen to disturb the friendship of Great Britain and the United States just at the time when the old controversies had been laid to rest by a series of masterly negotiations and equitable adjustments. This unhappy consummation was prevented when in 1914 Congress repealed the last sentence of the above section at the instance of President Wilson.

25. Treaty of 1914 between the United States and Colombia

The United States of America and the Republic of Colombia being desirous to remove all the misunderstandings growing out of the political events in Panama in November, 1903; to restore the cordial friendship that formerly characterized the relations between the two countries, and also to define and regulate their rights and interests in respect of the interoceanic Canal which the Government of the United States is constructing across the Isthmus of Panama, have resolved for this purpose to conclude a Treaty and have accordingly appointed as their Plenipotentiaries: (Here follows a list of names.)

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following:

Article I

The Government of the United States of America, wishing to put at rest all controversies and differences with the Republic of Colombia arising out of the events from which the present situation on the Isthmus of Panama resulted, express, in its own name and in the name of the people of the United States, sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that had so long subsisted between the two nations.

The Government of the Republic of Colombia, in its own name and in the name of the Colombian people, accepts this

declaration in the full assurance that every obstacle to the restoration of complete harmony between the two countries will thus disappear.

Article II

The Republic of Colombia shall enjoy the following rights in respect to the interoceanic Canal and the Panama Railway:

1. The Republic of Colombia shall be at liberty at all times to transport through the interoceanic Canal its troops, materials of war, and ships of war, even in case of war between Colombia and another country, without paying any charges to the United States.

2. The products of the soil and industry of Colombia passing through the Canal as well as the Colombian mails, shall be exempt from any charge or duty other than those to which the products and mails of the United States may be subject. The products of the soil and industry of Colombia, such as cattle, salt, and provisions, shall be admitted to entry in the Canal Zone, and likewise in the islands and mainland occupied or which may be occupied by the United States as auxiliary and accessory thereto, without paying other duties or charges than those payable by similar products of the United States.

3. Colombian citizens crossing the Canal Zone shall, upon production of proper proof of their nationality, be exempt from every toll, tax, or duty to which citizens of the United States are not subject.

4. During the construction of the interoceanic Canal and afterwards, whenever traffic by the Canal is interrupted or whenever it shall be necessary for any other reason to use the railway, the troops, materials of war, products, the mails of the Republic of Colombia, as above mentioned, shall, even in case of war between Colombia and another country, be transported on the railway between Ancon and Cristobal or on any other railway substituted therefor, paying only the same charges and duties as are imposed upon the troops, materials of war, products, and mails of the United States. The officers, agents, and employees of the Government of Colombia shall, upon

production of proper proof of their official character or their employment, also be entitled to passage on the said railway on the same terms as officers, agents, and employees of the Government of the United States. The provisions of this paragraph shall not, however, apply in case of war between Colombia and Panama.

5. Coal, petroleum, and sea salt, being the products of Colombia, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, and *vice versa*, shall be transported over the aforesaid Railway free of any charge except the actual cost of handling and transportation, which shall not in any case exceed one half of the ordinary freight charges levied upon similar products of the United States passing over the Railway and in transit from one port to another of the United States.

Article III

The United States of America agree to pay to the Republic of Colombia, within six months after the exchange of the ratification of the present Treaty, the sum of twenty-five million dollars, gold, United States money.

Article IV

The Republic of Colombia recognizes Panama as an independent nation, and taking as a basis the Colombian law of June 9, 1855, agrees that the boundary shall be the following: From Cape Tiburon to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nigue to the height of Aspave and from thence to a point on the Pacific, half way between Cocalito and La Ardita.

In consideration of this recognition the Government of the United States will, immediately after the exchange of the ratifications of the present Treaty, take the necessary steps in order to obtain from the Government of Panama the despatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship,

with a view to bring about the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents.

Article V

The present Treaty shall be approved and ratified by the High Contracting Parties in conformity with their respective laws, and the ratifications thereof shall be exchanged in the city of Bogota as soon as may be possible. — (*The Times*, May 16, 1914.)

NOTE. — This Treaty has not yet (July, 1914) been ratified. It cannot take effect till ratification.

26. Award of the Arbitral Tribunal in the North Atlantic Fisheries Dispute between Great Britain and the United States, 1910

A

Article I of the Treaty of 1818, the true Meaning of which was in Question

Whereas differences have arisen respecting the liberty claimed by the United States for the Inhabitants thereof, to take, dry and cure Fish on Certain Coasts, Bays, Harbours, and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straits of Belleisle and thence Northwardly indefinitely along the Coast, without prejudice, however, to any of the exclusive Rights of the Hudson Bay

Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground.— And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above-mentioned limits; provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

B

The Award of the Arbitrators

Preamble

Whereas, a Special Agreement between the United States of America and Great Britain, signed at Washington the 27th of January, 1909, and confirmed by interchange of Notes dated the 4th March, 1909, was concluded in conformity with the provisions of the General Arbitration Treaty between the United States of America and Great Britain, signed the 4th April, 1908 and ratified the 4th June, 1908;

And *whereas* the said Special Agreement for the submission of the questions relating to the fisheries on the North Atlantic Coast under the General Treaty of Arbitration concluded between the United States and Great Britain on the 4th day of

April, 1908, is as follows: (Here follows the text of the Agreement, the important points of which can be gathered from the Award);

And *whereas*, the Parties to the said Agreement have by common accord, in accordance with Article V, constituted as a Tribunal of Arbitration the following Members of the Permanent Court at The Hague: Mr. H. Lammach, Doctor of Law, Professor of the University of Vienna, Aulic Councillor, Member of the Upper House of the Austrian Parliament; His Excellency Jonkheer A. F. De Savornin Lohman, Doctor of Law, Minister of State, Former Minister of the Interior, Member of the Second Chamber of the Netherlands; the Honourable George Gray, Doctor of Laws, Judge of the United States Circuit Court of Appeals, former United States Senator: the Right Honourable Sir Charles Fitzpatrick, Member of the Privy Council, Doctor of Laws, Chief Justice of Canada; the Honourable Luis Maria Drago, Doctor of Law, former Minister of Foreign Affairs of the Argentine Republic, Member of the Law Academy of Buenos-Aires;

And *whereas*, the Agents of the Parties to the said Agreement have duly and in accordance with the terms of the Agreement communicated to this Tribunal their cases, counter-cases, printed arguments and other documents;

And *whereas*, counsel for the Parties have fully presented to this Tribunal their oral arguments in the sittings held between the first assembling of the Tribunal on 1st June, 1910, to the close of the hearings on 12th August, 1910;

Now, therefore, this Tribunal having carefully considered the said Agreement, cases, counter-cases, printed and oral arguments, and the documents presented by either side, after due deliberation makes the following decisions and awards:

Question I

To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which

the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being for instance —

(*a*) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with the British subjects;

(*b*) Desirable on grounds of public order and morals;

(*c*) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty, and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to restraints or limitations by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character —

(*a*) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(*b*) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(*c*) Unless their appropriateness, necessity, reasonableness, and fairness, be determined by the United States and Great Britain by common accord, and the United States concurs in their enforcement.

Question I, thus submitted to the Tribunal, resolves itself into two main contentions:

1st. Whether the right of regulating reasonably the liberties conferred by the Treaty of 1818 resides in Great Britain;

2d. And, if such right does so exist, whether such reasonable exercise of the right is permitted to Great Britain without the accord and concurrence of the United States.

The Treaty of 1818 contains no explicit disposition in regard to the right of regulation, reasonable or otherwise; it neither reserves that right in express terms, nor refers to it in any way. It is therefore incumbent on this Tribunal to answer the two questions above indicated by interpreting the general terms of Article I of the treaty, and more especially the words "the inhabitants of the United States shall have, forever in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind." This interpretation must be conformable to the general import of the instrument, the general intention of the parties to it, the subject matter of the contract, the expressions actually used, and the evidence submitted.

Now in regard to the preliminary question as to whether the right of reasonable regulation resides in Great Britain:

Considering that the right to regulate the liberties conferred by the Treaty of 1818 is an attribute of sovereignty, and as such must be held to reside in the territorial sovereign, unless the contrary be provided; and considering that one of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof to the contrary, the territory is coterminous with the sovereignty, it follows that the burden of the assertion involved in the contention of the United States (viz., that the right to regulate does not reside independently in Great Britain, the territorial sovereign) must fall on the United States. And for the purpose of sustaining this burden, the United States have put forward the following

series of propositions, each one of which must be singly considered.

It is contended by the United States:

(1) That the French right of fishery under the Treaty of 1763 designated also as a liberty, was never subjected to regulation by Great Britain, and therefore the inference is warranted that the American liberties of fisheries are similarly exempted.

The Tribunal is unable to agree with this contention:

(*a*) Because although the French right designated in 1713 merely "an allowance," (a term of even less force than used in regard to the American fishery) was nevertheless converted, in practice, into an exclusive right, this concession on the part of Great Britain was presumably made because France, before 1713, claimed to be the sovereign of Newfoundland, and, in ceding the Island, had, as the American argument says, "reserved for the benefit of its subjects the rights to fish and to use the strand:"

(*b*) Because the distinction between the French and American right is indicated by the different wording of the statutes for the observance of treaty obligations towards France and the United States, and by the British Declaration of 1783:

(*c*) And, also, because this distinction is maintained in the Treaty with France of 1904, concluded at a date when the American claim was approaching its present stage, and by which certain common rights of regulation are recognized to France.

For the further purpose of such proof it is contended by the United States:

(2) That the liberties of fishery, being accorded to the inhabitants of the United States "for ever," acquire, by being in perpetuity and unilateral, a character exempting them from local legislation.

The Tribunal is unable to agree with this contention:

(*a*) Because there is no necessary connection between the duration of a grant and its essential status in its relation to

local regulation; a right granted in perpetuity may yet be subject to regulation, or, granted temporarily, may yet be exempted therefrom; or being reciprocal may yet be unregulated, or being unilateral may yet be regulated: as is evidenced by the claim of the United States that the liberties of fishery accorded by the Reciprocity Treaty of 1854 and the Treaty of 1871 were exempt from regulation, though they were neither permanent nor unilateral;

(*b*) Because no peculiar character need be claimed for these liberties in order to secure their enjoyment in perpetuity, as is evidenced by the American negotiators in 1818 asking for the insertion of the words "for ever." International law in its modern development recognizes that a great number of treaty obligations are not annulled by war, but at most suspended by it;

(*c*) Because the liberty to dry and cure is, pursuant to the terms of the treaty, provisional and not permanent, and is nevertheless, in respect of the liability to regulation, identical in its nature with, and never distinguished from, the liberty to fish.

> For the further purpose of such proof, the United States allege:
>
> (3) That the liberties of fishery granted to the United States constitute an international servitude in their favour over the territory of Great Britain, thereby involving a derogation from the sovereignty of Great Britain, the servient State, and that therefore Great Britain is deprived, by reason of the grant, of its independent right to regulate the fishery.

The Tribunal is unable to agree with this contention:

(*a*) Because there is no evidence that the doctrine of international servitudes was one with which either American or British statesmen were conversant in 1818, no English publicists employing the term before 1818, and the mention of it in Mr. Gallatin's report being insufficient;

(*b*) Because a servitude in the French Law, referred to by

Mr. Gallatin, can, since the Code, be only real and cannot be personal (Code Civil, art. 686);

(*c*) Because a servitude in international law predicates an express grant of a sovereign right and involves an analogy to the relation of a *praedium dominans* and a *praedium serviens;* whereas by the Treaty of 1818 one State grants a liberty to fish, which is not a sovereign right, but a purely economic right, to the inhabitants of another State;

(*d*) Because the doctrine of international servitude in the sense which is now sought to be attributed to it originated in the peculiar and now obsolete conditions prevailing in the Holy Roman Empire of which the *domini terrae* were not fully sovereigns; they holding territory under the Roman Empire, subject at least theoretically, and in some respects also practically, to the courts of that Empire; their right being, moreover, rather of a civil than of a public nature, partaking more of the character of *dominium* than of *imperium*, and therefore certainly not a complete sovereignty. And because in contradistinction to this quasi-sovereignty with its incoherent attributes acquired at various times, by various means, and not impaired in its character by being incomplete in any one respect or by being limited in favour of another territory and its possessor, the modern State, and particularly Great Britain, has never admitted partition of sovereignty, owing to the constitution of a modern State requiring essential sovereignty and independence;

(*e*) Because this doctrine being but little suited to the principle of sovereignty which prevails in States under a system of constitutional government such as Great Britain and the United States, and to the present international relations of sovereign States, has found little, if any, support from modern publicists. It could therefore in the general interest of the community of nations, and of the Parties to this treaty, be affirmed by this Tribunal only on the express evidence of an international contract;

(*f*) Because even if these liberties of fishery constituted an international servitude, the servitude would derogate from the

sovereignty of the servient State only in so far as the exercise of the rights of sovereignty by the servient State would be contrary to the exercise of the servitude right by the Dominant State. Whereas it is evident that, though every regulation of the fishery is to some extent a limitation, as it puts limits to the exercise of the fishery at will, yet such regulations as are reasonable and made for the purpose of securing and preserving the fishery and its exercise for the common benefit, are clearly to be distinguished from those restrictions and "molestations," the annulment of which was the purpose of the American demands formulated by Mr. Adams in 1782, and such regulations consequently cannot be held to be inconsistent with a servitude;

(*g*) Because the fishery to which the inhabitants of the United States were admitted in 1783, and again in 1818, was a regulated fishery, as is evidenced by the following regulations: —

Act 15, Charles II, Cap. 16, s. 7 (1663) forbidding "to lay any seine or other net in or near any harbour in Newfoundland, whereby to take the spawn or young fry of the Poor-John, or for any other use or uses, except for the taking of bait only," which had not been superseded either by the Order in Council of March 10th, 1670, or by the Statute 10 and 11 Wm. III, Cap. 25, 1699. The Order in Council provides expressly for the obligation "to submit unto and to observe all rules and orders as are now, or hereafter shall be established," an obligation which cannot be read as referring only to the rules established by this very Act, and having no reference to anteceding rules "as are now established." In a similar way, the Statute of 1699 preserves in force prior legislation conferring the freedom of fishery only "as fully and freely as at any time heretofore." The Order in Council, 1670, provides that the Admirals, who always were fishermen, arriving from an English or Welsh port, "see that His Majesty's rules and orders concerning the regulation of the fisheries are duly put in execution" (sec. 13). Likewise the Act 10 and 11, Wm. III, Cap. 25 (1699) provides that the Admirals do settle differences between the fishermen arising in respect to the places to be assigned to the different vessels. As to Nova Scotia, the proclamation of 1665 ordains that no

one shall fish without license; that the licensed fishermen are obliged "to observe all laws and orders which now are made and published, or shall hereafter be made and published in this jurisdiction," and that they shall not fish on the Lord's day and shall not take fish at the time they come to spawn. The judgement of the Chief Justice of Newfoundland, October 26th, 1820, is not held by the Tribunal sufficient to set aside the proclamations referred to. After 1783, the Statute 26 Geo. III, Cap. 26, 1786, forbids "the use, on the shores of Newfoundland, of seines or nets for catching cod by hauling on shore or taking into boat, with meshes less than 4 inches"; a prohibition which cannot be considered as limited to the bank fishery. The act for regulating the fisheries of New Brunswick, 1793, which forbids "the placing of nets or seines across any cove or creek in the Province so as to obstruct the natural course of fish," and which makes specific provision for fishing in the Harbour of St. John, as to the manner and time of fishing, cannot be read as being limited to fishing from the shore. The act for regulating the fishing on the coast of Northumberland (1799) contains very elaborate dispositions concerning the fisheries in the bay of Miramichi which were continued in 1823, 1829, and 1834. The Statutes of Lower Canada, 1788 and 1807, forbid the throwing overboard of offal. The fact that these acts extend the prohibition over a greater distance than the first marine league from the shore may make them non-operative against foreigners without the territorial limits of Great Britain, but is certainly no reason to deny their obligatory character for foreigners within these limits;

(*h*) Because the fact that Great Britain rarely exercised the right of regulation in the period immediately succeeding 1818 is to be explained by various circumstances and is not evidence of the non-existence of the right;

(*i*) Because the words "in common with British subjects" tend to confirm the opinion that the inhabitants of the United States were admitted to a regulated fishery;

(*j*) Because the Statute of Great Britain, 1819, which gives legislative sanction to the Treaty of 1818, provides for the

making of "regulations with relation to the taking, drying and curing of fish by inhabitants of the United States in 'common.'"

For the purpose of such proof it is further contended by the United States, in this latter connection:

(4) That the words, "in common with British subjects" used in the Treaty should not be held as importing a common subjection to regulation, but as intending to negative a possible pretension on the part of the inhabitants of the United States to liberties of fishery exclusive of the right of British subjects to fish.

The Tribunal is unable to agree with this contention:

(*a*) Because such an interpretation is inconsistent with the historical basis of the American fishing liberty. The ground on which Mr. Adams founded the American right in 1782 was that the people then constituting the United States had always, when still under British rule, a part in these fisheries and that they must continue to enjoy their past right in the future. He proposed "that the subjects of His Britannic Majesty and the people of the United States shall continue to enjoy unmolested the right to take fish . . . where the inhabitants of both countries used, at any time heretofore, to fish." The theory of the partition of the fisheries, which by the American negotiators had been advanced with so much force, negatives the assumption that the United States could ever pretend to an exclusive right to fish on the British shores; and to insert a special disposition to that end would have been wholly superfluous;

(*b*) Because the words "in common" occur in the same connexion in the Treaty of 1818 as in the Treaties of 1854 and 1871. It will certainly not be suggested that in these Treaties of 1854 and 1871 the American negotiators meant by inserting the words "in common" to imply that without these words American citizens would be precluded from the right to fish on their own coasts and that, on American shores, British subjects should have an exclusive privilege. It would have been the very opposite of the concept of territorial waters to suppose that, without a special treaty-provision, British subjects could be

excluded from fishing in British waters. Therefore that cannot have been the scope and the sense of the words "in common";

(*c*) Because the words "in common" exclude the supposition that American inhabitants were at liberty to act at will for the purpose of taking fish, without any regard to the co-existing rights of other persons entitled to do the same thing; and because these words admit them only as members of a social community, subject to the ordinary duties binding upon citizens of that community, as to the regulations made for the common benefit; thus avoiding the "bellum omnium contra omnes" which would otherwise arise in the exercise of this industry;

(*d*) Because these words are such as would naturally suggest themselves to the negotiators of 1818, if their intention had been to express a common subjection to regulations as well as a common right.

In the course of the argument it has also been alleged by the United States:

(5) That the Treaty of 1818 should be held to have entailed a transfer or partition of sovereignty, in that it must in respect to the liberties of fishery be interpreted in its relation to the Treaty of 1783; and that this latter treaty was an act of partition of sovereignty and of separation, and as such was not annulled by the war of 1812.

Although the Tribunal is not called upon to decide the issue whether the Treaty of 1783 was a treaty of partition or not, the questions involved therein having been set at rest by the subsequent Treaty of 1818, nevertheless the Tribunal could not forbear to consider the contention on account of the important bearing the controversy has upon the true interpretation of the Treaty of 1818. In that respect the Tribunal is of opinion:

(*a*) That the right to take fish was accorded as a condition of peace to a foreign people; wherefore the British negotiators refused to place the right of British subjects on the same footing with those of American inhabitants; and further, refused

to insert the words also proposed by Mr. Adams — "continue to enjoy" — in the second branch of Art. III of the Treaty of 1783;

(*b*) That the Treaty of 1818 was in different terms, and very different in extent, from that of 1783, and was made for different considerations. It was, in other words, a new grant.

For the purpose of such proof it is further contended by the United States:

(6) That as contemporary commercial treaties contain express provisions for submitting foreigners to local legislation and the Treaty of 1818 contains no such provision, it should be held, *a contrario*, that inhabitants of the United States exercising these liberties are exempt from regulation.

The Tribunal is unable to agree with this contention:

(*a*) Because the commercial treaties contemplated did not admit foreigners to all and equal rights, seeing that local legislation excluded them from many rights of importance, e.g., that of holding land; and the purport of the provisions in question consequently was to preserve these discriminations. But no such discriminations existing in the common enjoyment of the fishery by American and British fishermen, no such provision was required;

(*b*) Because no proof is furnished of similar exemptions of foreigners from local legislation in default of treaty stipulations subjecting them thereto;

(*c*) Because no such express provision for subjection of the nationals of either Party to local law was made either in this Treaty, in respect to their reciprocal admission to certain territories as agreed in Art. III, or in Art. III of the Treaty of 1794; although such subjection was clearly contemplated by the Parties.

For the purpose of such proof it is further contended by the United States:

(7) That, as the liberty to dry and cure on the treaty coast and to enter bays and harbours on the non-treaty

coasts are both subjected to conditions, and the latter to specific restrictions, it should therefore be held that the liberty to fish should be subjected to no restrictions, as none are provided for in the treaty.

The Tribunal is unable to apply the principle of "*expressio unius exclusio alterius*" to this case:

(*a*) Because the conditions and restrictions as to the liberty to dry and cure on the shore and to enter the harbours are limitations of the rights themselves, and not restrictions of their exercise. Thus the right to dry and cure is limited in duration, and the right to enter bays and harbours is limited to particular purposes;

(*b*) Because these restrictions of the right to enter bays and harbours applying solely to American fishermen must have been expressed in the treaty, whereas regulations of the fishery, applying equally to American and British, are made by right of territorial sovereignty.

For the purpose of such proof it has been contended by the United States:

(8) That Lord Bathurst in 1815 mentioned the American right under the Treaty of 1783 as a right to be exercised "at the discretion of the United States"; and that this should be held as to be derogatory to the claim of exclusive regulation by Great Britain.

But the Tribunal is unable to agree with this contention:

(*a*) Because these words implied only the necessity of an express stipulation for any liberty to use foreign territory at the pleasure of the grantee, without touching any question as to regulation;

(*b*) Because in this same letter Lord Bathurst characterized this right as a policy "temporary and experimental, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences from a military, naval and commercial point of view"; so that it cannot have been

his intention to acknowledge the exclusion of British interference with this right;

(*c*) Because Lord Bathurst in his note to Governor Sir C. Hamilton in 1819 orders the Governor to take care that the American fishery on the coast of Labrador be carried on *in the same manner* as previous to the late war; showing that he did not interpret the treaty just signed as a grant conveying absolute immunity from interference with the American fishery right.

For the purpose of such proof it is further contended by the United States:

(9) That on various other occasions following the conclusion of the treaty, as evidenced by official correspondence, Great Britain made use of expressions inconsistent with the claim to a right of regulation.

The Tribunal, unwilling to invest such expressions with an importance entitling them to effect the general question, considers that such conflicting or inconsistent expressions as have been exposed on either side are sufficiently explained by their relations to ephemeral phases of a controversy of almost secular duration, and should be held to be without direct effect on the principal and present issues.

Now with regard to the second contention involved in Question I, as to whether the right of regulation can be reasonably exercised by Great Britain without the consent of the United States:

Considering that the recognition of a concurrent right of consent in the United States would affect the independence of Great Britain, which would become dependent on the Government of the United States for the exercise of its sovereign right of regulation, and considering that such a co-dominium would be contrary to the constitution of both sovereign States; the burden of proof is imposed on the United States to show that the independence of Great Britain was thus impaired by international contract in 1818 and that a co-dominium was created.

For the purpose of such proof it is contended by the United States:

(10) That a concurrent right to co-operate in the making and enforcement of regulations is the only possible and proper security to their inhabitants for the enjoyment of their liberties of fishery, and that such a right must be held to be implied in the grant of those liberties by the Treaty under interpretation.

The Tribunal is unable to accede to this claim on the ground of a right so implied:

(*a*) Because every State has to execute the obligations incurred by treaty *bona fide*, and is urged thereto by the ordinary sanctions of international law in regard to observance of treaty obligations. Such sanctions are, for instance, appeal to public opinion, publication of correspondence, censure by parliamentary vote, demand for arbitration with the odium attendant on a refusal to arbitrate, rupture of relations, reprisal, etc. But no reason has been shown why this treaty, in this respect, should be considered as different from every other treaty, under which the right of a State to regulate the action of foreigners admitted by it on its territory is recognized;

(*b*) Because the exercise of such a right of consent by the United States would predicate an abandonment of its independence in this respect by Great Britain, and the recognition by the latter of a concurrent right of regulation in the United States. But the treaty conveys only a liberty to take fish in common, and neither directly nor indirectly conveys a joint right of regulation;

(*c*) Because the treaty does not convey a common right of fishery but a liberty to fish in common. This is evidenced by the attitude of the United States Government in 1823, with respect to the relations of Great Britain and France in regard to the fishery;

(*d*) Because if the consent of the United States were requisite for the fishery a general veto would be accorded them, the full

exercise of which would be socially subversive and would lead to the consequence of an unregulatable fishery;

(*e*) Because the United States cannot by assent give legal force and validity to British legislation;

(*f*) Because the liberties to take fish in British territorial waters and to dry and cure fish on land in British territory are in principle on the same footing; but in practice a right of co-operation in the elaboration and enforcement of regulations in regard to the latter liberty (drying and curing fish on land) is unrealizable.

In any event, Great Britain as the local sovereign, has the duty of preserving and protecting the fisheries. In so far as it is necessary for that purpose, Great Britain is not entitled but obliged, to provide for the protection and preservation of the fisheries; always remembering that the exercise of this right of legislation is limited by the obligation to execute the treaty in good faith. This has been admitted by counsel and recognized by Great Britain in limiting the right of regulation to that of reasonable regulation. The inherent defect of this limitation of reasonableness, without any sanction except in diplomatic remonstrance, has been supplied by the submission to arbitral award as to existing regulations in accordance with Arts. II and III of the Special Agreement, and as to further regulation by the obligation to submit their reasonableness to an arbitral test in accordance with Art. IV of the Agreement.

It is finally contended by the United States:

That the United States did not expressly agree that the liberty granted to them could be subjected to any restriction that the grantor might choose to impose on the ground that in her judgement such restriction was reasonable. And that while admitting that all laws of a general character, controlling the conduct of men within the territory of Great Britain, are effective, binding, and beyond objection by the United States, and competent to be made upon the sole determination of Great Britain or her colony, without accountability to anyone whomsoever; yet there is somewhere a line, beyond which it is not

competent for Great Britain to go, or beyond which she cannot rightfully go, because to go beyond it would be an invasion of the right granted to the United States in 1818. That the legal effect of the grant of 1818 was not to leave the determination as to where that line is to be drawn to the uncontrolled judgement of the grantor, either upon the grantor's consideration as to what would be a reasonable exercise of its sovereignty over the British Empire, or upon the grantor's consideration of what would be a reasonable exercise thereof towards the grantee.

But this contention is founded on assumptions, which this Tribunal cannot accept for the following reasons in addition to those already set forth:

(*a*) Because the line by which the respective rights of both Parties accruing out of the treaty are to be circumscribed, can refer only to the right granted by the treaty; that is to say to the liberty of taking, drying and curing fish by American inhabitants in certain British waters in common with British subjects, and not to the exercise of rights of legislation by Great Britain not referred to in the treaty;

(*b*) Because a line which would limit the exercise of sovereignty of a State within the limits of its own territory can be drawn only on the ground of express stipulation, and not by implication from stipulations concerning a different subject-matter;

(*c*) Because the line in question is drawn according to the principles of international law that treaty obligations are to be executed in perfect good faith, therefore excluding the right to legislate at will concerning the subject-matter of the treaty, and limiting the exercise of sovereignty of the States bound by a treaty with respect to that subject-matter to such acts as are consistent with the treaty;

(*d*) Because on a true construction of the treaty the question does not arise whether the United States agreed that Great Britain should retain the right to legislate with regard to the fisheries in her own territory; but whether the treaty contains an abdication by Great Britain of the right which great Brit-

ain, as the sovereign power, undoubtedly possessed when the treaty was made, to regulate those fisheries;

(*e*) Because the right to make reasonable regulations, not inconsistent with the obligations of the treaty, which is all that is claimed by Great Britain, for a fishery which both Parties admit requires regulation for its preservation, is not a restriction of or an invasion of the liberty granted to the inhabitants of the United States. This grant does not contain words to justify the assumption that the sovereignty of Great Britain upon its own territory was in any way affected; nor can words be found in the treaty transferring any part of that sovereignty to the United States. Great Britain assumed only duties with regard to the exercise of its sovereignty. The sovereignty of Great Britain over the coastal waters and territory of Newfoundland remains after the treaty as unimpaired as it was before. But from the treaty results an obligatory relation whereby the right of Great Britain to exercise its right of sovereignty by making regulations is limited to such regulations as are made in good faith, and are not in violation of the treaty;

(*f*) Finally to hold that the United States, the grantee of the fishing right, has a voice in the preparation of fishery legislation involves the recognition of a right in that country to participate in the internal legislation of Great Britain and her Colonies, and to that extent would reduce these countries to a state of dependence.

While therefore unable to concede the claim of the United States as based on the treaty, this Tribunal considers that such claim has been and is to some extent, conceded in the relations now existing between the two Parties. Whatever may have been the situation under the Treaty of 1818 standing alone, the exercise of the right of regulation inherent in Great Britain has been, and is, limited by the repeated recognition of the obligations already referred to, by the limitations and liabilities accepted in the Special Agreement, by the unequivocal position assumed by Great Britain in the presentation of its case before this Tribunal, and by the consequent view of this Tribunal that it would be consistent with all the circumstances,

as revealed by this record, as to the duty of Great Britain, that she should submit the reasonableness of any future regulation to such an impartial arbitral test, affording full opportunity therefor, as is hereafter recommended under the authority of Article IV of the Special Agreement, whenever the reasonableness of any regulation is objected to or challenged by the United States in the manner, and within the time hereinafter specified in the said recommendation.

Now therefore this Tribunal decides and awards as follows:

The right of Great Britain to make regulations without the consent of the United States, as to the exercise of the liberty to take fish referred to in Article I of the Treaty of October 20th, 1818, in the form of municipal laws, ordinances or rules of Great Britain, Canada or Newfoundland is inherent to the sovereignty of Great Britain.

The exercise of that right by Great Britain is, however, limited by the said treaty in respect of the said liberties therein granted to the inhabitants of the United States in that such regulations must be made *bona fide* and must not be in violation of the said treaty.

Regulations which are (1) appropriate or necessary for the protection and preservation of such fisheries, or (2) desirable or necessary on grounds of public order and morals without unnecessarily interfering with the fishery itself, and in both cases equitable and fair as between local and American fishermen, and not so framed as to give unfairly an advantage to the former over the latter class, are not inconsistent with the obligation to execute the treaty in good faith, and are therefore reasonable and not in violation of the treaty.

For the decision of the question whether a regulation is or is not reasonable, as being or not in accordance with the dispositions of the treaty and not in violation thereof, the Treaty of 1818 contains no special provision. The settlement of differences in this respect that might arise thereafter was left to the ordinary means of diplomatic intercourse. By reason, however, of the form in which Question I is put, and by further reason of the admission of Great Britain by her counsel before this

Tribunal that it is not now for either of the Parties to the treaty to determine the reasonableness of any regulation made by Great Britain, Canada, or Newfoundland, the reasonableness of any such regulation, if contested, must be decided not by either of the Parties, but by an impartial authority in accordance with the principles hereinabove laid down, and in the manner proposed in the recommendations made by the Tribunal in virtue of Article IV of the Agreement.

The Tribunal further decides that Article IV of the Agreement is, as stated by counsel of the respective Parties at the argument, permanent in its effect, and not terminable by the expiration of the General Arbitration Treaty of 1908, between Great Britain and the United States.

In execution, therefore, of the responsibilities imposed upon this Tribunal in regard to Articles II, III and IV of the Special Agreement, we hereby pronounce in their regard as follows:

As to Article II

Pursuant to the provisions of this Article, hereinbefore cited, either Party has called the attention of this Tribunal to acts of the other claimed to be inconsistent with the true interpretation of the Treaty of 1818.

But in response to a request from the Tribunal, recorded in Protocol No. XXVI of 19th July, for an exposition of the grounds of such objections, the Parties replied as reported in Protocal No. XXX of 28th July to the following effect:

His Majesty's Government considered that it would be unnecessary to call upon the Tribunal for an opinion under the second clause of Article II, in regard to the executive act of the United States of America in sending warships to the territorial waters in question, in view of the recognized motives of the United States of America in taking this action and of the relations maintained by their representatives with the local authorities. And this being the sole act to which the attention of this Tribunal has been called by His Majesty's Government, no further action in their behalf is required from this Tribunal under Article II.

The United States of America presented a statement in which their claim that specific provisions of certain legislative and executive acts of the Governments of Canada and Newfoundland were inconsistent with the true interpretation of the Treaty of 1818 was based on the contention that these provisions were not "reasonable" within the meaning of Question I.

After calling upon this Tribunal to express an opinion on these acts, pursuant to the second clause of Article II, the United States of America pointed out in that statement that under Article III any question regarding the resonableness of any regulation might be referred by the Tribunal to a Commission of expert specialists, and expressed an intention of asking for such reference under certain circumstances.

The Tribunal having carefully considered the counter-statement presented on behalf of Great Britain at the session of August 2nd, is of opinion that the decision on the reasonableness of these regulations requires expert information about the fisheries themselves and an examination of the practical effect of a great number of these provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, as contemplated by Article III. No further action on behalf of the United States is therefore required from this Tribunal under Article II.

As to Article III

As provided in Article III, hereinbefore cited and above referred to, "any question regarding the reasonableness of any regulation, or otherwise, which requires an examination of the practical effect of any provisions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves may be referred by this Tribunal to a Commission of expert specialists; one to be designated by each of the Parties hereto and the third, who shall not be a national of either Party, to be designated by the Tribunal."

The Tribunal now therefore calls upon the Parties to designate

within one month their national Commissioners for the expert examination of the questions submitted.

As the third non-national Commissioner this Tribunal designates Doctor P. P. C. Hoek, Scientific Adviser for the Fisheries of the Netherlands, and if any necessity arises therefor a substitute may be appointed by the President of this Tribunal.

After a reasonable time, to be agreed on by the Parties, for the expert Commission to arrive at a conclusion, by conference, or, if necessary, by local inspection, the Tribunal shall, if convoked by the President at the request of either Party, thereupon at the earliest convenient date, reconvene to consider the report of the Commission, and if it be on the whole unanimous shall incorporate it in the award. If not on the whole unanimous, i.e., on all points which in the opinion of the Tribunal are of essential importance, the Tribunal shall make its award as to the regulations concerned after consideration of the conclusions of the expert Commisssioner and after hearing argument by counsel.

But while recognizing its responsibilities to meet the obligations imposed on it under Article III of the Special Agreement, the Tribunal hereby recommends as an alternative to having recourse to a reconvention of this Tribunal, that the Parties should accept the unanimous opinion of the Commission or the opinion of the non-national Commissioner on any points in dispute as an arbitral award rendered under the provisions of Chapter IV of the Hague Convention of 1907.

As to Article IV

Pursuant to the provisions of this Article, hereinbefore cited, this Tribunal recommends for the consideration of the Parties the following rules and method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in this award.

1

All future municipal laws, ordinances or rules for the regulation of the fishery by Great Britain in respect of (1) the hours,

days or seasons when fish may be taken on the Treaty coasts; (2) the method, means and implements used in the taking of fish or in carrying on fishing operations; (3) any other regulation of a similar character shall be published in the London *Gazette* two months before going into operation.

Similar regulations by Canada or Newfoundland shall be similarly published in the Canada *Gazette* and the Newfoundland *Gazette* respectively.

2

If the Government of the United States considers any such laws or regulations inconsistent with the Treaty of 1818, it is entitled to so notify the Government of Great Britain within the two months referred to in Rule No. I.

3

Any law or regulation so notified shall not come into effect with respect to inhabitants of the United States until the Permanent Mixed Fishery Commission has decided that the regulation is reasonable within the meaning of this award.

4

Permanent Mixed Fishery Commissions for Canada and Newfoundland respectively shall be established for the decision of such questions as to the reasonableness of future regulations, as contemplated by Article IV of the Special Agreement; these Commissions shall consist of an expert national appointed by either Party for five years. The third member shall not be a national of either Party; he shall be nominated for five years by the agreement of the Parties, or failing such agreement within two months, he shall be nominated by Her Majesty the Queen of the Netherlands. The two national members shall be convoked by the Government of Great Britain within one month from the date of notification by the Government of the United States.

5

The two national members having failed to agree within one month, within another month the full Commission, under the Presidency of the Umpire, is to be convoked by Great Britain. It must deliver its decision, if the two Governments do not agree otherwise, at the latest in three months. The Umpire shall conduct the procedure in accordance with that provided in Chapter IV of the Convention for the Pacific Settlement of International Disputes, except in so far as herein otherwise provided.

6

The form of convocation of the Commission including the terms of reference of the question at issue shall be as follows: "The provision hereinafter fully set forth of an Act dated published in the has been notified to the Government of Great Britain by the Government of the United States, under date of , as provided by the award of the Hague Tribunal of September 7th, 1910.

"Pursuant to the provisions of that award the Government of Great Britain hereby convokes the Permanent Mixed Fishery Commission for , composed of Commissioner for the United States of America, and of Commissioner for , which shall meet at and render a decision within one month as to whether the provision so notified is reasonable and consistent with the Treaty of 1818, as interpreted by the award of the Hague Tribunal of September 7th, 1910, and if not, in what respect it is unreasonable and inconsistent therewith.

"Failing an agreement on this question within one month the Commission shall so notify the Government of Great Britain in order that the further action required by that award may be taken for the decision of the above question.

"The provision is as follows: — "

7

The unanimous decision of the two national Commissioners, or the majority decision of the Umpire and one Commissioner, shall be final and binding.

Question II

Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

In regard to this question the United States claim in substance:

1. That the liberty assured to their inhabitants by the treaty plainly includes the right to use all the means customary or appropriate for fishing upon the sea, not only ships and nets and boats, but crews to handle the ships and the nets and the boats;
2. That no right to control or limit the means which these inhabitants shall use in fishing can be admitted unless it is provided in the terms of the treaty and no right to question the nationality or inhabitancy of the crews employed is contained in the terms of the treaty.

And Great Britain claims:

1. That the treaty confines the liberty to inhabitants of the United States exclusively;
2. That the Governments of Great Britain, Canada or Newfoundland may, without infraction of the treaty, prohibit other persons from engaging as fishermen in American vessels.

Now considering (1) that the liberty to take fish is an economic right attributed by the treaty; (2) that it is attributed to inhabitants of the United States, without any mention of their nationality; (3) that the exercise of an economic right includes the right to employ servants; (4) that the right of employing servants has not been limited by the treaty to the employment

of persons of a distinct nationality or inhabitancy; (5) that the liberty to take fish as an economic liberty refers not only to the individuals doing the manual act of fishing, but also to those for whose profit the fish are taken.

But considering, (1) that the treaty does not intend to grant to individual persons or to a class of persons the liberty to take fish in certain waters "in common," that is to say in company, with individual British subjects, in the sense that no law could forbid British subjects to take service on American fishing ships; (2) that the treaty intends to secure to the United States a share of the fisheries designated therein, not only in the interest of a certain class of individuals, but also in the interest of both the United States and Great Britain, as appears from the evidence and notably from the correspondence between Mr. Adams and Lord Bathurst in 1815; (3) that the inhabitants of the United States do not derive the liberty to take fish directly from the treaty, but from the United States Government as party to the treaty with Great Britain and moreover exercising the right to regulate the conditions under which its inhabitants may enjoy the granted liberty; (4) that it is in the interest of the inhabitants of the United States that the fishing liberty granted to them be restricted to exercise by them and removed from the enjoyment of other aliens not entitled by this treaty to participate in the fisheries; (5) that such restrictions have been throughout enacted in the British Statute of June 15, 1819, and that of June 3, 1824, to this effect, that no alien or stranger whatsoever shall fish in the waters designated therein, except in so far as by treaty thereto entitled, and that this exception will, in virtue of the Treaty of 1818, as hereinbefore interpreted by this award, exempt from these statutes American fishermen fishing by the agency of non-inhabitant aliens employed in their service; (6) that the treaty does not affect the sovereign right of Great Britain as to aliens, non-inhabitants of the United States, nor the right of Great Britain to regulate the engagement of British subjects, while these aliens or British subjects are on British territory.

Now therefore, in view of the preceding considerations this

Tribunal is of opinion that the inhabitants of the United States while exercising the liberties referred to in the said Article have a right to employ, as members of the fishing crews of their vessels, persons not inhabitants of the United States.

But in view of the preceding considerations the Tribunal, to prevent any misunderstanding as to the effect of its award, expresses the opinion that non-inhabitants employed as members of the fishing crews of United States vessels derive no benefit or immunity from the treaty and it is so decided and awarded.

Question III

Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbour or other dues, or to any other similar requirement or condition or exaction?

The Tribunal is of opinion as follows:

It is obvious that the liberties referred to in this question are those that relate to taking fish and to drying and curing fish on certain coasts as prescribed in the Treaty of October 20, 1818. The exercise of these liberties by the inhabitants of the United States in the prescribed waters to which they relate, has no reference to any commercial privileges which may or may not attach to such vessels by reason of any supposed authority outside the treaty, which itself confers no commercial privileges whatever upon the inhabitants of the United States or the vessels in which they may exercise the fishing liberty. It follows, therefore, that when the inhabitants of the United States are not seeking to exercise the commercial privileges accorded to trading vessels for the vessels in which they are exercising the granted liberty of fishing, they ought not to be subjected to requirements as to report and entry at custom-houses that are only appropriate to the exercise of commercial privileges. The exercise of the fishing liberty is distinct from the exercise of commercial or trading privileges and it is not competent for

Great Britain or her Colonies to impose upon the former exactions only appropriate to the latter. The reasons for the requirements enumerated in the case of commercial vessels, have no relation to the case of fishing vessels.

We think, however, that the requirement that American fishing vessels should report, if proper conveniences and an opportunity for doing so are provided, is not unreasonable or inappropriate. Such a report, while serving the purpose of a notification of the presence of a fishing vessel in the treaty waters for the purpose of exercising the treaty liberty, while it gives an opportunity for a proper surveillance of such vessel by revenue officers, may also serve to afford to such fishing vessel protection from interference in the exercise of the fishing liberty. There should be no such requirement, however, unless reasonably convenient opportunity therefor be afforded in person or by telegraph, at a custom-house or to a customs official.

The Tribunal is also of opinion that light and harbour dues, if not imposed on Newfoundland fishermen, should not be imposed on American fishermen while exercising the liberty granted by the treaty. To impose such dues on American fishermen only would constitute an unfair discrimination between them and Newfoundland fishermen, and one inconsistent with the liberty granted to American fishermen to take fish, etc., "in common with the subjects of His Britannic Majesty."

Further, the Tribunal considers that the fulfilment of the requirement as to report by fishing vessels on arrival at the fishery would be greatly facilitated in the interests of both Parties by the adoption of a system of registration, and distinctive marking of the fishing boats of both Parties, analogous to that established by Articles V to XIII, inclusive, of the International Convention signed at the Hague, 8 May, 1882, for the regulation of the North Sea Fisheries.

The Tribunal therefore decides and awards as follows:

The requirement that an American fishing vessel should report, if proper conveniences for doing so are at hand, is not unreasonable, for the reasons stated in the foregoing opinion. There should be no such requirement, however, unless there

be reasonably convenient opportunity afforded to report in person or by telegraph, either at a custom-house or to a customs official.

But the exercise of the fishing liberty by the inhabitants of the United States should not be subjected to the purely commercial formalities of report, entry and clearance at a custom-house, nor to light, harbour or other dues not imposed upon Newfoundland fishermen.

Question IV

Under the provisions of the said Article that the American fishermen shall be admitted to enter certain bays or harbours for shelter, repairs, wood or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbour or other dues, or entering or reporting at custom-houses or any similar conditions?

The Tribunal is of opinion that the provision in the first Article of the Treaty of October 20th, 1818, admitting American fishermen to enter certain bays or harbours for shelter, repairs, wood and water, and for no other purpose whatever, is an exercise in large measure of those duties of hospitality and humanity which all civilized nations impose upon themselves and expect the performance of from others. The enumerated purposes for which entry is permitted all relate to the exigencies in which those who pursue their perilous calling on the sea may be involved. The proviso which appears in the first article of the said treaty immediately after the so-called renunciation clause, was doubtless due to a recognition by Great Britain of what was expected from the humanity and civilization of the then leading commercial nation of the world. To impose restrictions making the exercise of such privileges conditional upon the payment of light, harbour, or other dues, or entering and reporting at custom-houses, or any similar conditions would be incon-

sistent with the grounds upon which such privileges rest and therefore is not permissible.

And it is decided and awarded that such restrictions are not permissible.

It seems reasonable, however, in order that these privileges accorded by Great Britain on these grounds of hospitality and humanity should not be abused, that the American fishermen entering such bays for any of the four purposes aforesaid and remaining more than 48 hours therein, should be required, if thought necessary by Great Britain or the Colonial Government, to report, either in person or by telegraph, at a custom-house or to a customs official, if reasonably convenient opportunity therefor is afforded.

And it is so decided and awarded.

Question V

From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said Article?

In regard to this question, Great Britain claims that the renunciation applies to all bays generally and

The United States contend that it applies to bays of a certain class or condition.

Now, considering that the treaty used the general term "bays" without qualification, the Tribunal is of opinion that these words of the Treaty must be interpreted in a general sense as applying to every bay on the coast in question that might be reasonably supposed to have been considered as a bay by the negotiators of the treaty under the general conditions then prevailing, unless the United States can adduce satisfactory proof that any restrictions or qualifications of the general use of the term were or should have been present to their minds.

And for the purpose of such proof the United States contend:

1°. That while a State may renounce the treaty right to fish in foreign territorial waters, it cannot renounce the natural right to fish on the high seas.

But the Tribunal is unable to agree with this contention. Because though a State cannot grant rights on the high seas it certainly can abandon the exercise of its right to fish on the high seas within certain definite limits. Such an abandonment was made with respect to their fishing rights in the waters in question by France and Spain in 1763. By a convention between the United Kingdom and the United States in 1846, the two countries assumed ownership over waters in Fuca Straits at distances from the shore as great as 17 miles.

The United States contend moreover:

> 2°. That by the use of the term "liberty to fish" the United States manifested the intention to renounce the liberty in the waters referred to only in so far as that liberty was dependent upon or derived from a concession on the part of Great Britain, and not to renounce the right to fish in those waters where it was enjoyed by virtue of their natural right as an independent State.

But the Tribunal is unable to agree with this contention:

(*a*) Because the term "liberty to fish" was used in the renunciatory clause of the Treaty of 1818 because the same term had been previously used in the Treaty of 1783 which gave the liberty; and it was proper to use in the renunciatory clause the same term that was used in the grant with respect to the object of the grant; and, in view of the terms of the grant, it would have been improper to use the term "right" in the renunciation. Therefore the conclusion drawn from the use of the term "liberty" instead of the term "right" is not justified;

(*b*) Because the term "liberty" was a term properly applicable to the renunciation which referred not only to fishing in the territorial waters but also to drying and curing on the shore. This latter right was undoubtedly held under the provisions of the treaty and was not a right accruing to the United States by virtue of any principle of international law.

3°. The United States also contend that the term "bays of His Brittanic Majesty's Dominions" in the renunciatory clause must be read as including only those bays which were under the territorial sovereignty of Great Britain.

But the Tribunal is unable to accept this contention:

(*a*) Because the description of the coast on which the fishery is to be exercised by the inhabitants of the United States is expressed throughout the Treaty of 1818 in geographical terms and not by reference to political control; the treaty describes the coast as contained between capes;

(*b*) Because to express the political concept of dominion as equivalent to sovereignty, the word "dominion" in the singular would have been an adequate term and not "dominions" in the plural; this latter term having a recognized and well settled meaning as descriptive of those portions of the earth which owe political allegiance to His Majesty; e.g. "His Brittanic Majesty's Dominions beyond the Seas."

4°. It has been further contended by the United States that the renunciation applies only to bays six miles or less in width "inter fauces terrae," those bays only being territorial bays, because the three mile rule is, as shown by this treaty, a principle of international law applicable to coasts and should be strictly and systematically applied to bays.

But the Tribunal is unable to agree with this contention:

(*a*) Because admittedly the geographical character of a bay contains conditions which concern the interests of the territorial sovereign to a more important and intimate extent than do those connected with the open coast. Thus conditions of national and territorial integrity, of defence, of commerce and of industry are all vitally concerned with the control of the bays penetrating the national coastline. This interest varies, speaking generally in proportion to the penetration inland of the bay; but as no principle of international law

recognizes any specified relation between the concavity of the bay and the requirements for control by the territorial sovereignty, this Tribunal is unable to qualify by the application of any new principle its interpretation of the Treaty of 1818 as excluding bays in general from the strict and systematic application of the three mile rule; nor can this Tribunal take cognizance in this connection of other principles concerning the territorial sovereignty over bays such as ten mile or twelve mile limits of exclusion based on international acts subsequent to the Treaty of 1818 and relating to coasts of a different configuration and conditions of a different character;

(*b*) Because the opinion of jurists and publicists quoted in the proceedings conduce to the opinion that speaking generally the three mile rule should not be strictly and systematically applied to bays;

(*c*) Because the treaties referring to these coasts, antedating the Treaty of 1818, made special provisions as to bays, such as the Treaties of 1686 and 1713 between Great Britain and France, and especially the Treaty of 1778 between the United States and France. Likewise Jay's Treaty of 1794, Art. 25, distinguished bays from the space "within cannon-shot of the coast" in regard to the right of seizure in times of war. If the proposed Treaty of 1806 and the Treaty of 1818 contained no disposition to that effect, the explanation may be found in the fact that the first extended the marginal belt to five miles, and also in the circumstance that the American proposition of 1818 in that respect was not limited to "bays" but extended to "chambers formed by headlands" and to "five marine miles from a right line from one headland to another," a proposition which in the times of the Napoleonic wars would have effected to a very large extent the operations of the British Navy;

(*d*) Because it has not been shown by the documents and correspondence in evidence here that the application of the three mile rule to bays was present to the minds of the negotiators in 1818 and they could not reasonably have been expected either to presume it or to provide against its presumption;

(*e*) Because it is difficult to explain the words in Art. III of

the treaty under interpretation "country . . . together with its bays, harbours and creeks" otherwise than that all bays without distinction as to their width were, in the opinion of the negotiators, part of the territory;

(*f*) Because from the information before this Tribunal it is evident that the three mile rule is not applied to bays strictly or systematically either by the United States or by any other Power;

(*g*) It has been recognized by the United States that bays stand apart, and that in respect of them territorial jurisdiction may be exercised farther than the marginal belt in the case of Delaware Bay by the report of the United States Attorney General of May 19th, 1793; and the letter of Mr. Jefferson to Mr. Genet of November 8th, 1793 declares the bays of the United States generally to be, "as being landlocked, within the body of the United States."

> 5°. In this latter regard it is further contended by the United States, that such exceptions only should be made from the application of the three mile rule to bays as are sanctioned by conventions and established usage; that all exceptions for which the United States of America were responsible are so sanctioned; and that His Majesty's Government are unable to provide evidence to show that the bays concerned by the Treaty of 1818 could be claimed as exceptions on these grounds either generally, or except possibly in one or two cases, specifically.

But the Tribunal while recognizing that conventions and established usage might be considered as the basis for claiming as territorial those bays which on this ground might be called historic bays, and that such claim should be held valid in the absence of any principle of international law on the subject; nevertheless is unable to apply this, *a contrario*, so as to subject the bays in question to the three mile rule, as desired by the United States;

(*a*) Because Great Britain has during this controversy as-

serted a claim to these bays generally, and has enforced such claim specifically in statutes or otherwise, in regard to the more important bays such as Chaleurs, Conception, and Miramichi;

(*b*) Because neither should such relaxations of this claim, as are in evidence, be construed as renunciations of it; nor should omissions to enforce the claim in regard to bays as to which no controversy arose, be so construed. Such a construction by this Tribunal would not only be intrinsically inequitable but internationally injurious; in that it would discourage conciliatory diplomatic transactions and encourage the assertion of extreme claims in their fullest extent;

(*c*) Because any such relaxations in the extreme claim of Great Britain in its international relations are compensated by recognitions of it in the same sphere by the United States; notably in relations with France for instance in 1823 when they applied to Great Britain for the protection of their fishery in the bays on the western coast of Newfoundland, whence they had been driven by French war vessels on the ground of the pretended exclusive right of the French. Though they never asserted that their fishermen had been disturbed within the three mile zone, only alleging that the disturbance had taken place in the bays, they claimed to be protected by Great Britain for having been molested in waters which were, as Mr. Rush stated, "clearly within the jurisdiction and sovereignty of Great Britain."

6°. It has been contended by the United States that the words "coasts, bays, creeks or harbours" are here used only to express different parts of the coast and are intended to express and be equivalent to the word "coast" whereby the three marine miles would be measured from the sinuosities of the coast and the renunciation would apply only to the waters of bays within three miles.

But the Tribunal is unable to agree with this contention:

(*a*) Because it is a principle of interpretation that words in

a document ought not to be considered as being without any meaning if there is not specific evidence to that purpose and the interpretation referred to would lead to the consequence, practically of reading the words "bays, coasts and harbours" out of the treaty; so that it would read "within three miles of any of the coasts" including therein the coasts of the bays and harbours;

(*b*) Because the word "therein" in the proviso — "restrictions necessary to prevent their taking, drying or curing fish therein" can refer only to "bays," and not to the belt of three miles along the coast; and can be explained only on the supposition that the words "bays, creeks and harbours" are to be understood in their usual ordinary sense and not in an artificially restricted sense of bays within the three mile belt;

(*c*) Because the practical distinction for the purpose of this fishery between coasts and bays and the exceptional conditions pertaining to the latter has been shown from the correspondence and the documents in evidence, especially the Treaty of 1783, to have been in all probability present to the minds of the negotiators of the Treaty of 1818;

(*d*) Because the existence of this distinction is confirmed in the same article of the treaty by the proviso permitting the United States fishermen to enter bays for certain purposes;

(*e*) Because the word "coasts" is used in the plural form whereas the contention would require its use in the singular;

(*f*) Because the Tribunal is unable to understand the term "bays" in the renunciatory clause in other than its geographical sense, by which a bay is to be considered as an indentation of the coast, bearing a configuration of a particular character easy to determine specifically, but difficult to describe generally.

The negotiators of the Treaty of 1818 did probably not trouble themselves with subtle theories concerning the notion of "bays"; they most probably thought that everybody would know what was a bay. In this popular sense the term must be interpreted in the treaty. The interpretation must take into account all the individual circumstances which for any one of the different bays are to be appreciated, the relation of its width

to the length of penetration inland, the possibility and the necessity of its being defended by the State in whose territory it is indented; the special value which it has for the industry of the inhabitants of its shores; the distance which it is secluded from the highways of nations on the open sea and other circumstances not possible to enumerate in general.

For these reasons the Tribunal decides and awards:

In case of bays the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the three marine miles are to be measured following the sinuosities of the coast.

But considering the Tribunal cannot overlook that this answer to Question V, although correct in principle and the only one possible in view of the want of a sufficient basis for a more concrete answer, is not entirely satisfactory as to its practical applicability, and that it leaves room for doubts and differences in practice. Therefore the Tribunal considers it its duty to render the decision more practicable and to remove the danger of future differences by adjoining to it a recommendation in virtue of the responsibilities imposed by Art. IV of the Special Agreement.

Considering, moreover, that in treaties with France, with the North German Confederation and the German Empire and likewise in the North Sea Convention, Great Britain has adopted for similar cases the rule that only bays of ten miles width should be considered as those wherein the fishing is reserved to nationals. And that in the course of the negotiations between Great Britain and the United States a similar rule has been on various occasions proposed and adopted by Great Britain in instructions to the naval officers stationed on these coasts. And that though these circumstances are not sufficient to constitute this a principle of international law, it seems reasonable to propose this rule with certain exceptions, all the more that this rule with such exceptions has already formed the basis of an agreement between the two Powers.

Now therefore this Tribunal in pursuance of the provisions

of Art. IV hereby recommends for the consideration and acceptance of the High Contracting Parties the following rules and method of procedure for determining the limits of the bays hereinbefore enumerated.

1

In every bay not hereinafter specifically provided for the limits of exclusion shall be drawn three miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles.

2

In the following bays where the configuration of the coast and the local climatic conditions are such that foreign fishermen when within the geographic headlands might reasonably and *bona fide* believe themselves on the high seas, the limits of exclusion shall be drawn in each case between the headlands hereinafter specified as being those at and within which such fishermen might be reasonably expected to recognize the bay under average conditions.

For the Baie des Chaleurs the line from the Light at Birch Point on Miscou Island to Macquereau Point Light; for the Bay of Miramichi, the line from the Light at Point Escuminac to the Light on the Eastern Point of Tabisintac Gully; for Egmont Bay, in Prince Edward Island, the line from the Light at Cape Egmont to the Light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from the Light at Point Anconi to the nearest point on the opposite shore of the mainland.

For Fortune Bay, in Newfoundland, the line from Connaigre Head to the Light on the Southeasterly end of Brunet Island, thence to Fortune Head.

For or near the following bays the limits of exclusion shall be three marine miles seawards from the following lines, namely:

For or near Barrington Bay, in Nova Scotia, the line from the Light on Stoddart Island to the Light on the South Point of Cape Sable, thence to the Light at Baccaro Point; at Cheda-

bucto and St. Peter's Bays, the line from Cranberry Island Light to Green Island Light, thence to Point Rouge; for Mira Bay, the line from the Light on the East Point of Scatari Island to the Northeasterly Point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point on the Eastern mainland shore, to the most Southerly Point of Red Island, thence by the most Southerly Point of Merasheen Island to the mainland.

Long Island and Bryer Island, on St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bays.

It is understood that nothing in these rules refers either to the Bay of Fundy considered as a whole apart from its bays and creeks or as to the innocent passage through the Gut of Canso, which were excluded by the agreement made by exchange of notes between Mr. Bacon and Mr. Bryce dated February 21st, 1909 and March 4th, 1909; or to Conception Bay, which was provided for by the decision of the Privy Council in the case of the Direct United States Cable Company v. The Anglo-American Telegraph Company, in which decision the United States have acquiesced.

Question VI

Have the inhabitants of the United States the liberty under the said Article or otherwise, to take fish in the bays, harbours, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, and on the Magdalen Islands?

In regard to this question, it is contended by the United States that the inhabitants of the United States have the liberty under Art. I of the treaty of taking fish in the bays, harbours and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands and on the western and northern coasts of Newfoundland from Cape Ray to

Quirpon Islands and on the Magdalen Islands. It is contended by Great Britain that they have no such liberty.

Now considering that the evidence seems to show that the intention of the Parties to the Treaty of 1818, as indicated by the records of the negotiations and by the subsequent attitude of the Governments was to admit the United States to such fishery, this Tribunal is of opinion that it is incumbent on Great Britain to produce satisfactory proof that the United States are not so entitled under the treaty.

For this purpose Great Britain points to the fact that whereas the treaty grants to American fishermen liberty to take fish "on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador" the liberty is granted to the "coast" only of Newfoundland and to the "shore" only of the Magdalen Islands; and argues that evidence can be found in the correspondence submitted indicating an intention to exclude Americans from Newfoundland bays on the treaty coast, and that no value would have been attached at that time by the United States Government to the liberty of fishing in such bays because there was no cod fishery there as there was in the bays of Labrador.

But the Tribunal is unable to agree with this contention:

(*a*) Because the words "part of the southern coast . . . from . . . to" and the words "western and northern coast . . . from . . . to" clearly indicate one uninterrupted coastline; and there is no reason to read into the words "coasts" a contradistinction to bays, in order to exclude bays. On the contrary, as already held in the answer to Question V, the words "liberty, forever, to dry and cure fish in any of the unsettled bays, harbours and creeks of the Southern part of the coast of Newfoundland hereabove described," indicate that in the meaning of the treaty, as in all the preceding treaties relating to the same territories, the words coast, coasts, harbours, bays, etc., are used, without attaching to the word "coast" the specific meaning of excluding bays. Thus in the

provision of the Treaty of 1783 giving liberty "to take fish on such part of the coast of Newfoundland as British fishermen shall use"; the word "coast" necessarily includes bays, because if the intention had been to prohibit the entering of the bays for fishing the following words "but not to dry or cure the same on that island," would have no meaning. The contention that in the Treaty of 1783 the word "bays" is inserted lest otherwise Great Britain would have had the right to exclude the Americans to the three mile line, is inadmissible, because in that treaty that line is not mentioned;

(*b*) Because the correspondence between Mr. Adams and Lord Bathurst also shows that during the negotiations for the treaty the United States demanded the former rights enjoyed under the Treaty of 1783, and that Lord Bathurst in the letter of 30th October, 1815 made no objection to granting those "former rights" "placed under some modifications" which latter did not relate to the right of fishing in bays, but only to the "preoccupation of British harbours and creeks by the fishing vessels of the United States and the forcible exclusion of British subjects where the fishery might be most advantageously conducted," and "to the clandestine introduction of prohibited goods into the British colonies." It may be therefore assumed that the word "coast" is used in both treaties in the same sense, including bays;

(*c*) Because the treaty expressly allows the liberty to dry and cure in the unsettled bays, etc., of the southern part of the coast of Newfoundland, and this shows that, *a fortiori*, the taking of fish in those bays is also allowed; because the fishing liberty was a lesser burden than the grant to cure and dry, and the restrictive clauses never refer to fishing in contradistinction to drying, but always to drying in contradistinction to fishing. Fishing is granted without drying, never drying without fishing;

(*d*) Because there is not sufficient evidence to show that the enumeration of the component parts of the coast of Labrador was made in order to discriminate between the coast of Labrador and the coast of Newfoundland;

(*e*) Because the statement that there is no codfish in the bays of Newfoundland and that the Americans only took interest in the codfishery is not proved; and evidence to the contrary is to be found in Mr. John Adams' Journal of Peace Negotiations of November 25, 1782;

(*f*) Because the treaty grants the right to take fish of every kind, and not only codfish;

(*g*) Because the evidence shows that, in 1823, the Americans were fishing in Newfoundland bays and that Great Britain when summoned to protect them against expulsion therefrom by the French did not deny their right to enter such bays.

Therefore this Tribunal is of opinion that American inhabitants are entitled to fish in the bays, creeks and harbours of the treaty coasts of Newfoundland and the Magdalen Islands and it is so decided and awarded.

Question VII

Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the Treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

Now assuming that commercial privileges on the treaty coasts are accorded by agreement or otherwise to United States trading vessels generally, without any exception, the inhabitants of the United States, whose vessels resort to the same coasts for the purpose of exercising the liberties referred to in Article I of the Treaty of 1818, are entitled to have for those vessels when duly authorized by the United States in that behalf, the above mentioned commercial privileges, the treaty containing nothing to the contrary. But they cannot at the same time and during the same voyage exercise their treaty rights and enjoy their commercial privileges, because treaty rights and commercial privileges are submitted to different rules, regulations and restraints.

For these reasons this Tribunal is of opinion that the inhabitants of the United States are so entitled in so far as concerns this treaty, there being nothing in its provisions to disentitle them provided the treaty liberty of fishing and the commercial privileges are not exercised concurrently and it is so decided and awarded.

NOTE. — In 1912 an Agreement between Great Britain and the United States was signed and ratified, whereby they adopted with certain modifications the rules and methods of procedure recommended by the Arbitral Tribunal, "under which all questions which may arise in the future with regard to the exercise of the liberties referred to in Article I of the Treaty of October 20, 1818, may be determined in accordance with the principles laid down in the Award." They also adopted the recommendations of the Tribunal as to the determination of the limits of bays contiguous to the territory of the Dominion of Canada, leaving for future consideration, if necessary, the question of the delimitation of Newfoundland Bays. (*Supplement to the American Journal of International Law*, Jan. 1913, pp. 41–46.)

27. Excerpts from the British Order in Council of March 15, 1893, assuming Jurisdiction over Certain Islands in the Pacific Ocean

Whereas by the second and sixth Sections of the British Settlements Act, 1887, it is Enacted,

(Here follows a recital of various enactments.)

And *whereas* there are in the Pacific Ocean certain Islands which are, or may hereafter become, British Settlements within the meaning of the said Act.

And *whereas* there are also in the Pacific Ocean certain Islands or places which are, or may hereafter come, under the protection of Her Majesty.

And *whereas* by treaty, grant, usage, sufferance, or other lawful means, Her Majesty has or may have power and jurisdiction in the said last mentioned islands and places. . . .

Now, therefore, Her Majesty by virtue and in exercise of the powers in this behalf by the British Settlements Act, 1887, the Pacific Islanders Protection Acts, and the Foreign Jurisdiction Act, 1890, or otherwise, in Her Majesty vested, is pleased by

and with the advice of her Privy Council to order, and it is hereby ordered, as follows: — . . .

4. The limits of this Order shall be the Pacific Ocean and the islands and places therein, including

(*a*) Islands and places which are for the time being British Settlements.

(*b*) Islands and places which are for time being under the protection of Her Majesty.

(*c*) Islands and places which are for the time being under no civilized government, but exclusive (except as in this Order expressly provided in relation to any particular matter) of

(1) Any place within any part of Her Majesty's dominions or the territorial waters thereof which is for the time being within the jurisdiction of the legislature of any British possession.

(2) Any place for the time being within the jurisdiction or protectorate of any civilised power.

5. In islands and places which are not British settlements, or under the protection of Her Majesty, jurisdiction under this Order shall be exercised (except only as this Order otherwise expressly provides) only over Her Majesty's subjects, and any foreigners or natives, in so far as by reason of being, or having been, on board a British ship or otherwise, they have come under a duty of allegiance to Her Majesty.

23. Crimes, offences, wrongs and breaches of contract against or affecting the person, property and rights of natives or foreigners, committed by persons subject to this Order, are, subject to the provisions of this Order, punishable or otherwise cognisable, in the same manner as if they were committed against or affected the person, property or rights of British subjects.

109. (1) Where a foreigner desires to institute or take a suit or proceeding of a civil nature against a British subject, or a British subject desires to institute or take a suit or proceeding of a civil nature against a foreigner, the Court may entertain the suit or proceeding, and hear and determine it . . . at a place where such trial might be had if all parties were

British subjects, and in all other respects according to the ordinary course of the Court.

(2) Provided that the foreigner first files in the Court his consent to the jurisdiction of the Court; and also, if required by the Court, obtains and files a certificate in writing from a competent authority of his own government to the effect that no objection is made by that government to the foreigner submitting in the particular cause or matter to the jurisdiction of the Court; and also, if required by the Court, gives security to the satisfaction of the Court, to such reasonable amount as the Court directs, by deposit of money or otherwise, to pay fees, costs, damages, and expenses, and to abide by and perform the decision to be given by the court or on appeal.

28. Extract from the Judgment of Chief Justice Marshall in the case of the *Exchange*

To the court, it appears, that where, without treaty, the ports of a nation are open to the private and public ships of a friendly power, whose subjects have also liberty without special license, to enter the country for business or amusement, a clear distinction is to be drawn between the rights accorded to private individuals or trading vessels, and those accorded to public armed ships which constitute a part of the military force of the nation.

The preceding reasoning has maintained the propositions that all exemptions from territorial jurisdiction must be derived from the consent of the sovereign of the territory; that this consent may be implied or expressed; and that, when implied, its extent must be regulated by the nature of the case and the views under which the parties requiring and conceding it must be supposed to act.

When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would

subject the laws to continual infraction, and the government to degradation, if such individuals did not owe temporary and local allegiance, and were not amenable to the jurisdiction of that country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries, are not employed by him, nor are they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption. But in all respects different is the situation of a public armed ship. She constitutes a part of the military force of her nation; acts under the immediate and direct command of the sovereign; is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign state. Such interference cannot take place without affecting his power and his dignity. The implied license therefore, under which such vessel enters a friendly port, may reasonably be construed, and, it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the rights of hospitality.

Upon these principles, by the unanimous consent of nations, a foreigner is amenable to the laws of the place; but certainly in practice, nations have not yet asserted their jurisdiction over the public armed ships of a foreign sovereign, entering a port open for their reception.

Bynkershoek, a jurist of great reputation, has indeed maintained that the property of a foreign sovereign is not distinguishable by any legal exemption from the property of an ordinary individual, and has quoted several cases in which courts have exercised jurisdiction over causes in which a foreign sovereign was made a party defendant.

Without indicating any opinion on this question, it may safely be affirmed, that there is a manifest distinction between the private property of the person who happens to be a prince, and

that military force which supports the sovereign power, and maintains the dignity and independence of a nation. A prince, by acquiring private property in a foreign country, may possibly be considered as subjecting that property to the territorial jurisdiction; he may be considered as so far laying down the prince, and assuming the character of a private individual; but this he cannot be presumed to do with respect to any portion of that armed force, which upholds his crown, and the nation he is intrusted to govern.

The only applicable case cited by Bynkershoek, is that of the Spanish ships of war, seized in Flushing for a debt due from the King of Spain. In that case the states generally interposed; and there is reason to believe, from the manner in which the transaction is stated, that, either by the interference of government, or the decision of the court, the vessels were released. This case of the Spanish vessels is, it is believed, the only case furnished by the history of the world, of an attempt made by an individual to assert a claim against a foreign prince, by seizing the armed vessels of the nation. That this proceeding was at once arrested by the government, in a nation which appears to have asserted the power of proceeding in the same manner against the private property of the prince, would seem to furnish no feeble argument in support of the universality of the opinion in favor of the exemption claimed for ships of war. The distinction made in our own laws between public and private ships would appear to proceed from the same opinion.

It seems, then, to the court, to be a principle of public law, that national ships of war, entering the port of a friendly power open for their reception, are to be considered as exempted by the consent of that power from its jurisdiction.

Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction, either by employing force, or by subjecting such vessels to the ordinary tribunals. But, until such power be exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to the ordinary tri-

bunals a jurisdiction, which it would be a breach of faith to exercise. Those general statutory provisions, therefore, which are descriptive of the ordinary jurisdiction of the judicial tribunals, which give an individual whose property has been wrested from him, a right to claim that property in the courts of the country in which it is found, ought not, in the opinion of this court, to be so construed as to give them jurisdiction in a case in which the sovereign power has impliedly consented to waive its jurisdiction.

The arguments in favour of this opinion which have been drawn from the general inability of the judicial power to enforce its decisions in cases of this description, from the consideration that the sovereign power of the nation is alone competent to avenge wrongs committed by a sovereign, that the questions to which such wrongs give birth are rather questions of policy than of law, that they are for diplomatic, rather than legal discussion, are of great weight, and merit serious attention. But the argument has already been drawn to a length which forbids a particular examination of these points.

The principles which have been stated will now be applied to the case at bar.

In the present state of the evidence and proceedings, the *Exchange* must be considered as a vessel which was the property of the libellants, whose claim is repelled by the fact, that she is now a national armed vessel, commissioned by, and in the service of the Emperor of France. The evidence of this fact is not controverted. But it is contended that it constitutes no bar to an inquiry into the validity of the title, by which the Emperor holds this vessel. Every person, it is alleged, who is entitled to property brought within the jurisdiction of our courts, has a right to assert his title in those courts, unless there be some law taking his case out of the general rule. It is therefore said to be the right, and if it be the right, it is the duty of the court, to inquire whether this title has been extinguished by an act, the validity of which is recognized by national or municipal law.

If the preceding reasoning be correct, the *Exchange*, being

a public armed ship, in the service of a foreign sovereign, with whom the government of the United States is at peace, and having entered an American port open for her reception, on the terms on which ships of war are generally permitted to enter the ports of a friendly power, must be considered as having come into the American territory under an implied promise, that while necessarily within it, and demeaning herself in a friendly manner, she should be exempt from the jurisdiction of the country. — (7 *Cranch*, 116.)

NOTE. — The *Exchange* was originally an American schooner. In 1810 she was seized by order of Napoleon, then Emperor of the French, and duly set forth as a lawfully commissioned French ship under the name of the *Balaou*. As such she put into the port of Philadelphia in 1811, when she was claimed by her original owners. The effect of Chief Justice Marshall's decision was to confirm the authority over her of her French captain and officers.

29. Excerpts from the General Act of the Brussels Conference of 1890 for the Suppression of the African Slave Trade

CHAPTER I. SLAVE-TRADE COUNTRIES. — MEASURES TO BE TAKEN IN THE PLACES OF ORIGIN

Article I

The powers declare that the most effective means of counteracting the slave-trade in the interior of Africa are the following:

1. Progressive organization of the administrative, judicial, religious, and military services in the African territories placed under the sovereignty or protectorate of civilized nations.

2. The gradual establishment in the interior, by the powers to which the territories are subject, of strongly occupied stations, in such a way as to make their protective or repressive action effectively felt in the territories devastated by slave-hunting.

3. The construction of roads, and in particular of railways, connecting the advanced stations with the coast, and permitting easy access to the inland waters, and to such of the upper courses of the rivers and streams as are broken by rapids and cataracts, with a view to substituting economical and

rapid means of transportation for the present system of carriage by men.

4. Establishment of steam-boats on the inland navigable waters and on the lakes, supported by fortified posts established on the banks.

5. Establishment of telegraphic lines, insuring the communication of the posts and stations with the coast and with the administrative centres.

6. Organization of expeditions and flying columns, to keep up the communication of the stations with each other and with the coast, to support repressive action, and to insure the security of high roads.

7. Restriction of the importation of fire-arms, at least of those of modern pattern, and of ammunition throughout the entire extent of the territory in which the slave-trade is carried on.

Article III

The powers exercising a sovereignty or a protectorate in Africa confirm and give precision to their former declarations, and engage to proceed gradually, as circumstances may permit, either by the means above indicated or by any other means that they may consider suitable, with the repression of the slave-trade, each State in its respective possessions and under its own direction. Whenever they consider it possible, they shall lend their good offices to such powers as, with a purely humanitarian object, may be engaged in Africa in the fulfilment of a similar mission.

Article VI

Slaves liberated in consequence of the stoppage or dispersion of a convoy in the interior of the continent, shall be sent back, if circumstances permit, to their country of origin; if not, the local authorities shall facilitate, as much as possible, their means of living, and if they desire it, help them to settle on the spot.

Article VII

Any fugitive slave claiming, on the continent, the protection of the signatory powers, shall receive it, and shall be received

in the camps and stations officially established by said powers, or on board of the vessels of the State plying on the lakes and rivers. Private stations and boats are only permitted to exercise the right of asylum subject to the previous consent of the State.

Article VIII

The experience of all nations that have intercourse with Africa having shown the pernicious and preponderating part played by fire-arms in operations connected with the slave-trade as well as internal wars between the native tribes; and this same experience having clearly proved that the preservation of the African population whose existence it is the express wish of the powers to protect, is a radical impossibility, if measures restricting the trade in fire-arms and ammunition are not adopted, the powers decide, so far as the present state of their frontiers permits, that the importation of fire-arms, and especially of rifles and improved weapons, as well as of powder, ball and cartridges, is, except in the cases and under the conditions provided for in the following Article, prohibited in the territories comprised between the 20th parallel of North latitude and the 22nd parallel of South latitude, and extending westward to the Atlantic Ocean and eastward to the Indian Ocean and its dependencies, including the islands adjacent to the coast within 100 nautical miles from the shore.

Article XIII

The signatory powers that have possessions in Africa in contact with the zone specified in Article VIII, bind themselves to take the necessary measures for preventing the introduction of fire-arms and ammunition across their inland frontiers into the regions of said zone, at least that of improved arms and cartridges.

Chapter II. Caravan Routes and Transportation of Slaves by Land

Article XV

Independently of the repressive or protective action which they exercise in the centres of the slave-trade, it shall be the duty of the stations, cruisers and posts, whose establishment is provided for in Article II, and of all other stations established or recognized by Article IV, by each government in its possessions, to watch, so far as circumstances shall permit, and in proportion to the progress of their administrative organization, the roads travelled in their territory by slave-dealers, to stop convoys on their march, or to pursue them wherever their action can be legally exercised.

Article XVII

A strict watch shall be organized by the local authorities at the ports and places near the coast, with a view to preventing the sale and shipment of slaves brought from the interior, as well as the formation and departure landwards of bands of slave-hunters and dealers.

Caravans arriving at the coast or in its vicinity, as well as those arriving in the interior at a locality occupied by the territorial power, shall, on their arrival, be subjected to a minute inspection as to the persons composing them. Any such person being ascertained to have been captured or carried off by force, or mutilated, either in his native place or on the way, shall be set free.

Article XVIII

In the possessions of each of the contracting powers, it shall be the duty of the government to protect liberated slaves, to return them, if possible, to their country, to procure means of subsistence for them, and, in particular, to take charge of the education and subsequent employment of abandoned children.

Chapter III. Repression of the Slave-Trade by Sea

Section I. General Provisions.

Article XX

The signatory powers recognize the desirability of taking steps in common for the more effective repression of the slave-trade in the maritime zone in which it still exists.

Article XXI

This zone extends, on the one hand, between the coasts of the Indian Ocean (those of the Persian Gulf and of the Red Sea included), from Beloochistan to Cape Tangalane (Quilimane); and, on the other hand, a conventional line which first follows the meridian from Tangalane till it intersects the 26th degree of South latitude; it is then merged in this parallel, then passes round the Island of Madagascar by the east, keeping 20 miles off the east and north shore, till it intersects the meridian at Cape Ambre. From this point the limit of the zone is determined by an oblique line, which extends to the coast of Beloochistan, passing 20 miles off Cape Ras-el-Had.

Article XXII

The signatory powers of the present General Act, among whom exist special conventions for the suppression of the slave-trade, have agreed to restrict the clauses of those conventions concerning the reciprocal right of visit, of search and of seizure of vessels at sea, to the above mentioned zone.

Article XXIII

The same powers also agree to limit the above mentioned right to vessels whose tonnage is less than 500 tons. This stipulation shall be revised as soon as experience shall have shown the necessity thereof.

Article XXIV

All other provisions of the conventions concluded for the suppression of the slave-trade between the aforesaid powers

shall remain in force provided they are not modified by the present General Act.

Article XXV

The signatory powers engage to adopt efficient measures to prevent the unlawful use of their flag, and to prevent the transportation of slaves on vessels authorized to fly their colours.

Article XXVI

The signatory powers engage to adopt all measures necessary to facilitate the speedy exchange of information calculated to lead to the discovery of persons taking part in operations connected with the slave-trade.

Article XXVII

At least one international bureau shall be created; it shall be established at Zanzibar. The high contracting parties engage to forward to it all the documents specified in Article XLI, as well as all information of any kind likely to assist in the suppression of the slave-trade.

Article XXVIII

Any slave who has taken refuge on board a ship of war bearing the flag of one of the signatory powers, shall be immediately and definitely set free. Such freedom, however, shall not withdraw him from the competent jurisdiction if he has been guilty of any crime or offence at common law.

Article XXIX

Any slave detained against his will on board of a native vessel shall have the right to demand his liberty. His release may be ordered by any agent of any of the signatory powers on whom the present general act confers the right of ascertaining the status of persons on board of such vessels, although such release shall not withdraw him from the competent jurisdiction if he has committed any crime or offence at common law. — (*Sup-*

plement to the American Journal of International Law, Jan., 1909, pp. 29–61.)

NOTE. — This Treaty is worthy to be ranked with the Geneva Convention as a valuable humanitarian document. It was signed by all the great Powers of Europe, the United States of America, Belgium, Denmark, Holland, Portugal, Persia, Turkey, Spain, Sweden, and Zanzibar; that is to say, by all the Powers specially interested in the African Slave Trade, whether because of their territorial possessions, trading interests or benevolent activities. The extracts here given deal only with the broad and general aspect of the plan embodied in the Treaty. Not only have details been passed over, but many matters of minor importance have been omitted altogether. Careful regulations were drawn up concerning the grant to native vessels by any signatory power of the right to use its flag. Precautions were taken lest slaves should be carried under the guise of negro passengers. The methods to be employed in making captures and carrying on trials were prescribed. An International Information Office was set up at Zanzibar. Measures were taken for the protection of liberated slaves and the restriction of the traffic in intoxicating liquors. The provisions concerning these and other matters were too minute to be reproduced here. Moreover, lapse of time, changed circumstances, the lack of interest shewn by some Powers and the diverson of the zeal of others into different channels have rendered some of the regulations obsolete. From the beginning difficulties arose about ratification, mainly because of the Right of Search given in the Treaty. They were, however, overcome by 1892. In 1899 further provision was made for restricting the trade in spirituous liquors with the native tribes.

30. Bargain for the Substitution of Territorial for Consular Jurisdiction

MADAGASCAR AND ZANZIBAR

The Marquess of Salisbury to Sir E. Monson

FOREIGN OFFICE, April 22, 1897.

SIR,

I have received your Excellency's despatch of the 6th instant, containing copies of two notes addressed to your Excellency by the French Minister of Foreign Affairs.

In the first of these M. Hanotaux states that he takes note of the assurances given to him by your Excellency on the 29th

ultimo, to the effect that Her Majesty's Government were prepared to instruct their Agents in Madagascar to recognize the jurisdiction of the French Tribunals in the island over the British subjects established there, and adds that he would be glad to hear that the instructions had been sent by telegraph.

In the second his Excellency states that, in compliance with the wish expressed by your Excellency, the Government of the Republic is disposed to abandon the exercise of its rights of jurisdiction over those now subject to it in Zanzibar, on the day when the administration of justice there shall have been assured by properly constituted British Tribunals. His Excellency asks that you will communicate this declaration to Her Majesty's Government.

I requested your Excellency on the 11th instant to inform the French Government that, in view of these assurances, I had instructed the British Consular officers in the Island of Madagascar to recognize the jurisdiction of the French Tribunals in the island over British subjects.

Those instructions were sent by telegraph, and I request your Excellency to inform M. Hanotaux that Her Majesty's Government takes note with satisfaction of his Excellency's declaration in regard to the abandonment of French jurisdiction in Zanzibar.

I am, &c.,
(Signed) SALISBURY.

(*British Parliamentary Papers, Africa*, No. 8 (1897), p. 59.)

31. A Modern Extradition Treaty

THE UNITED STATES AND FRANCE, 1909

The United States of America and the Republic of France, being desirous to confirm their friendly relations and to promote the cause of justice, have resolved to conclude a new treaty for the extradition of fugitives from justice, and have appointed for that purpose the following plenipotentiaries: (Here follow certain names.)

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

Article I

The Government of the United States and the Government of France mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes or offences specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offence had been there committed.

Article II

Extradition shall be granted for the following crimes and offences:

1°. Murder, assassination, parricide, infanticide and poisoning; manslaughter, when voluntary; assault with intent to commit murder.

2°. Rape, abortion, bigamy.

3°. Arson.

4°. Robbery, burglary, house-breaking or shop-breaking.

5°. Forgery; the utterance of forged papers, the forgery or falsification of official acts of government, of public authority, or of courts of justice, or the utterance of the thing forged or falsified.

6°. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, municipal or other governments, or of coupons thereof, or of bank-notes, or the utterance or circulation of the same; or the counterfeiting, falsifying, or altering of seals of state.

7°. Fraud or breach of trust by a bailee, banker, agent, factor, executor, administrator, guardian, trustee or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries, and the amount of money or the value of the property misappropriated is not less than two hundred dollars, or one thousand francs.

Embezzlement by public officers or depositaries; embezzlement by persons hired or salaried, to the detriment of their employers.

8°. Larceny; obtaining money, valuable securities or other property by false pretences, when such act is made criminal by the laws of both countries, and the amount of money or the value of the property fraudulently obtained is not less than two hundred dollars or one thousand francs.

9°. Perjury, subornation of perjury.

10°. Child-stealing, or abduction of a minor under the age of 14 for a boy and of 16 for a girl.

11°. Kidnapping of minors or adults.

12°. Wilful and unlawful destruction or obstruction of railroads, which endangers human life.

13°. (*a*) Piracy, by the law of nations.

(*b*) The act by any person, being or not being one of the crew of a vessel, of taking possession of such vessel by fraud or violence.

(*c*) Wrongfully sinking or destroying a vessel at sea.

(*d*) Revolt or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the captain or master.

(*e*) Assaults on board a ship on the high seas, with intent to do grievous bodily harm.

14°. Crimes and offences against the laws of both countries for the suppression of slavery and slave-trading.

15°. Receiving money, valuable securities or other property knowing the same to have been unlawfully obtained, when such act is made criminal by the laws of both countries and the amount of money or the value of the property so received

is not less than two hundred dollars or one thousand francs.

Extradition shall also be granted for participation or complicity in or attempt to commit any of the crimes or offences above mentioned when such participation, complicity, or attempt is punishable by the laws of the two countries.

Article III

Requisitions for the surrender of fugitives from justice shall be made by the diplomatic agents of the contracting parties, or, in the absence of these from the country or its seat of government, they may be made by the consular officers.

If the person whose extradition is requested shall have been convicted of a crime or offence, a duly authenticated copy of the sentence of the court in which he was convicted, or, if the fugitive is merely charged with a crime or offence, a duly authenticated copy of the warrant of arrest in the country where the crime or offence has been committed and of the depositions or other evidence upon which such warrant was issued, shall be produced.

The extradition of fugitives under the provisions of this treaty shall be carried out in the United States and in France, respectively, in conformity with the laws regulating extradition for the time being in force in the state on which the demand for surrender is made.

Article IV

The arrest and detention of a fugitive may be applied for on information, even by telegraph, of the existence of a judgment of conviction or of a warrant of arrest.

In France, the application for arrest and detention shall be addressed to the Minister for Foreign Affairs who will transmit it to the proper department.

In the United States, the application for arrest and detention shall be addressed to the Secretary of State, who shall deliver a warrant certifying that the application is regularly made and requesting the competent authorities to take action thereon in conformity to statute.

In both countries, in case of urgency, the application for arrest and detention may be addressed directly to the competent magistrate in conformity to the statutes in force.

In both countries, the person provisionally arrested shall be released, unless within forty days from the date of arrest in France, or from the date of commitment in the United States, the formal requisition for surrender with the documentary proofs hereinbefore prescribed be made as aforesaid by the diplomatic agent of the demanding government or, in his absence, by a consular officer thereof.

Article V

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

Article VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made shall be final.

Article VII

No person surrendered by either of the high contracting parties to the other shall be triable or tried or be punished for any crime or offence committed prior to his extradition, other than the offence for which he was delivered up, nor shall such person be arrested or detained on civil process for a cause accrued before extradition, unless he has been at liberty for one month after having been tried, to leave the country, or, in case of conviction, for one month after having suffered his punishment or having been pardoned.

Article VIII

Extradition shall not be granted, in pursuance of the provisions of this convention, if the person claimed has been tried for the same act in the country to which the requisition is addressed, or if legal proceedings or the enforcement of the penalty for the act committed by the person claimed have become barred by limitation, according to the laws of the country to which the requisition is addressed.

Article IX

If the person whose extradition may be claimed, pursuant to the stipulations hereof, be actually under prosecution for a crime or offence in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be terminated, and until such criminal shall be set at liberty in due course of law.

Article X

If the individual claimed by one of the high contracting parties, in pursuance of the present treaty, shall also be claimed by one or several other Powers on account of crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the state whose demand is first received; provided, that the government from which extradition is asked is not bound by treaty, in case of concurrent demands, to give preference to the one earliest in date, in which event that shall be the rule; and provided that no other arrangement is made between the demanding governments according to which preference may be given either on account of the gravity of the crime committed or for any other reason.

Article XI

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offence,

shall, so far as practicable, and if the competent authority of the state applied to orders the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

Article XII

The expenses incurred in the arrest, detention, examination and delivery of fugitives under this treaty shall be borne by the state in whose name the extradition is sought; provided, that the demanding government shall not be compelled to bear any expense for the services of such public officers or functionaries of the government from which extradition is sought as receive a fixed salary; and provided, that the charge for the services of such public officers or functionaries as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers or functionaries.

Article XIII

In the colonies and other possessions of the two high contracting parties, the manner of proceeding may be as follows:

The requisition for the surrender of a fugitive criminal who has taken refuge in a colony or foreign possession of either party may be made to the governor or chief authority of such colony or possession by the chief consular officer of the other in such colony or possession; or if the fugitive has escaped from a colony or foreign possession of the party on whose behalf the requisition is made, by the governor or chief authority of such colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this treaty, by the respective governors or chief authorities, who, however, shall be at liberty either to grant the surrender or refer the matter to their government.

Article XIV

The present treaty shall take effect on the thirtieth day after the date of the exchange of ratifications, and shall not operate retroactively.

On the day on which it takes effect, the conventions of November 9, 1843, February 24, 1845, and February 10, 1858, shall cease to be in force except as to crimes therein enumerated and committed prior to that date.

The ratifications of this treaty shall be exchanged at Paris as soon as possible, and it shall remain in force for a period of six months after either of the two governments shall have given notice of a purpose to terminate it. — (*Supplement to the American Journal of International Law*, Oct., 1911, pp. 234–249.)

32. Extract from the Rules on Extradition voted by the Institute of International Law at Geneva, 1892

Article XIV

Criminal acts directed against the foundations of the whole social order, and not merely against a particular state or a particular form of government are not to be regarded as political offences from the point of view of the application of the preceding rules. — (*Annuaire de l'Institut de Droit International*, 1892–94, pp. 181–82.)

NOTE. — The rules referred to declared that those who were concerned in acts done in the course of a rebellion or civil war should not be extradited unless the acts in question were forbidden by the laws of war, and that, in the case of offenses that are both political in motive and object and also ordinary crimes, extradition should not be granted unless they were of a very serious character, such as assassination or arson. The protection accorded by these rules was taken away by the Article reproduced above from those who are in revolt against the existing social order.

33. The Concert of Europe

Extracts from Speeches by the Late Lord Salisbury and Sir Edward Grey

A

Lord Salisbury

The peace of Europe is enormously important. If the Concert of Europe had not existed, that peace would have been exposed to great danger. Every statesman in Europe looked forward to the reopening of the Eastern Question with dread as something which might light the flames of war in Europe. It is the great praise and achievement of the Concert of Europe that it has prevented that terrible calamity. . . . Remember this, that this Federation of Europe is the embryo of the only possible structure of Europe which can save civilisation from the desolating effects of a disastrous war. On all sides the instruments of destruction are piling up. . . . The one hope we have to prevent this from ending in a terrible effort of mutual destruction which will be fatal to Christian civilisation is that the Powers may gradually be brought to act in a friendly spirit, until at last they shall be welded together in some international constitution which shall give to the world as the result of their great strength a long spell of unfettered commerce, prosperous trade and continued peace. — (*Speech at the Mansion House*, Nov. 9, 1897.)

B

Sir Edward Grey

There is another matter of vital importance, and that is that the Great Powers should continue to keep in touch with each other and that no one of them should take any action which is likely to cause differences between them. That has been the object which we have striven to promote in common with other Powers, and that is the object for which we shall continue to strive. The Great Powers have in the course of the last few months come to certain decisions among themselves, especially

with regard to Albania, which have contributed materially to preserve harmony between them. It is, of course, essential that nothing which happens in the war now proceeding in the Balkans should upset these decisions, which are valuable assets on the side of harmony between the parties. There are other matters still to be decided between the Powers to secure complete agreement among them. Those we shall continue to discuss and with those, I trust, we shall make some progress. But the best prospect I can put before the House is that the war now proceeding in the Balkans is so exhausting . . . that the mere intensity of it should bring it to a conclusion, and that no complication should arise out of it which will make any of the Great Powers lose touch with or endanger the Concert of Europe. . . . The first business of the Concert of Europe after all is to preserve itself and to preserve harmony between its component parts. If that failed the consequences to Europe would be far more disastrous than anything which has yet occurred. — (*Speech in the House of Commons*, July 14, 1913.)

34. The Monroe Doctrine

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the Minister of the United States at St. Petersburg, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the north-west of this continent. A similar proposal had been made by his Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate, the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved,

that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

. . . . . .

The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow men on that side of the Atlantic. In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced, that we resent injuries or make preparation for our defence. With the movements in this hemisphere we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of our most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States.

. . . . . .

Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the Government *de facto* as the legitimate Government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy; meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference. — (*Message of President Monroe*, Dec. 2, 1823.)

35. Memorandum of Mr. Hay, United States Secretary of State, to the Imperial German Embassy, 1901, Concerning the Monroe Doctrine

The President in his message of the 3rd of December, 1901, used the following language: "The Monroe doctrine is a declaration that there must be no territorial aggrandizement by any non-American power at the expense of any American power on American soil. It is in no wise intended as hostile to any nation in the Old World." The President further said: "This doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires. . . . We do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power."

His Excellency the German Ambassador, on his recent return from Berlin, conveyed personally to the President the assurance of the German Emperor that His Majesty's Government had

no purpose or intention to make even the smallest acquisition of territory on the South American Continent or the islands adjacent. This voluntary and friendly declaration was afterwards repeated to the Secretary of State, and was received by the President and the people of the United States in the frank and cordial spirit in which it was offered. In the memorandum of the 11th of December, his Excellency the German Ambassador repeats these assurances as follows: "We declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory."

In the said memorandum of the 11th of December, the German Government informs that of the United States that it has certain just claims for money and for damages wrongfully withheld from German subjects by the Government of Venezuela, and that it proposes to take certain coercive measures described in the memorandum to enforce the payment of these just claims.

The President of the United States, appreciating the courtesy of the German Government in making him acquainted with the state of affairs referred to, and not regarding himself as called upon to enter into the consideration of the claims in question, believes that no measures will be taken in this matter by the agents of the German Government which are not in accordance with the well-known purpose, above set forth, of His Majesty the German Emperor. — (Moore, *International Law Digest*, VI, 590.)

36. President Roosevelt on the Monroe Doctrine, 1904

It is not true that the United States feels any land hunger or entertains any projects as regards the other nations of the Western Hemisphere save such as are for their welfare. All that this country desires is to see the neighbouring countries stable, orderly, and prosperous. Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps

order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power. If every country washed by the Caribbean Sea would show the progress in stable and just civilization which with the aid of the Platt amendment Cuba has shown since our troops left the island, and which so many of the republics in both Americas are constantly and brilliantly showing, all question of interference by this nation with their affairs would be at an end. Our interests and those of our southern neighbours are in reality identical. They have great natural riches, and if within their borders the reign of law and justice obtains, prosperity is sure to come to them. While they thus obey the primary laws of civilized society they may rest assured that they will be treated by us in a spirit of cordial and helpful sympathy. We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations. It is a mere truism to say that every nation, whether in America or anywhere else, which desires to maintain its freedom, and its independence, must ultimately realize that the right to such independence cannot be separated from the responsibility of making good use of it. — (*Annual Message*, Dec. 6, 1904.)

37. Responsibilities connected with the Monroe Doctrine

The United States and the Republic of Santo Domingo

I submit herewith a protocol concluded between the Dominican Republic and the United States.

The conditions in the Republic of Santo Domingo have been growing steadily worse for many years. There have been many disturbances and revolutions, and debts have been contracted beyond the power of the Republic to repay. Some of these debts were properly contracted and are held by those who have a legitimate right to their money. Others are without question improper or exorbitant, constituting claims which should never be paid in full and perhaps only to the extent of a very small portion of their nominal value.

Certain foreign countries have long felt themselves aggrieved because of the non-payment of debts due their citizens. The only way by which foreign creditors could ever obtain from the Republic itself any guaranty of payment would be either by the acquisition of territory outright or temporarily, or else by taking possession of the custom-houses, which would of course in itself, in effect, be taking possession of a certain amount of territory.

It has for some time been obvious that those who profit by the Monroe doctrine must accept certain responsibilities along with the rights which it confers; and that the same statement applies to those who uphold the doctrine. It cannot be too often and too emphatically asserted that the United States has not the slightest desire for territorial aggrandizement at the expense of any of its southern neighbours, and will not treat the Monroe doctrine as an excuse for aggrandizement on its part. We do not propose to take any part of Santo Domingo, or exercise any other control over the island save what is necessary to its financial rehabilitation in connection with the collection of revenue, part of which will be turned over to the Government to meet the necessary expense of running it, and part of which will be distributed *pro rata* among the creditors of the Republic upon a basis of absolute equity. The justification for the United States taking this burden and incurring this responsibility is to be found in the fact that it is incompatible with international equity for the United States to refuse to allow other powers to take the only means at their disposal of satisfying the claims of their creditors and yet to refuse to take, itself, any such steps.

An aggrieved nation can without interfering with the Monroe doctrine take what action it sees fit in the adjustment of its disputes with American states, provided that action does not take the shape of interference with their form of government or of the despoilment of their territory under any disguise. But, short of this, when the question is one of a money claim, the only way which remains, finally, to collect it is a blockade, or bombardment, or the seizure of the custom-houses, and this means, as has been said above, what is in effect a possession, even though only a temporary possession, of territory. The United States then becomes a party in interest, because under the Monroe doctrine it cannot see any European power seize and permanently occupy the territory of one of these Republics; and yet such seizure of territory, disguised or undisguised, may eventually offer the only way in which the power in question can collect any debts, unless there is interference on the part of the United States.

One of the difficult and increasingly complicated problems, which often arise in Santo Domingo, grows out of the violations of contracts and concessions, sometimes improvidently granted, with valuable privileges and exemptions stipulated for upon grossly inadequate considerations which were burdensome to the state, and which are not infrequently disregarded and violated by the governing authorities. Citizens of the United States and of other governments holding these concessions and contracts appeal to their respective governments for active protection and intervention. Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States Government, following its traditional usage in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, there are governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaries, supported by powerful influences, make loud appeal to the United States Government in similar cases for similar action. They complain that in the

actual posture of affairs their valuable properties are practically confiscated, that American enterprize is paralyzed, and that unless they are fully protected, even by the enforcement of their merely contractual rights, it means the abandonment to the subjects of other governments of the interests of American trade and commerce through the sacrifice of their investments by excessive taxes imposed in violation of contract, and by other devices, and the sacrifice of the output of their mines and other industries, and even of their railway and shipping interests, which they have established in connection with the exploitation of their concessions. Thus the attempted solution of the complex problem by the ordinary methods of diplomacy reacts injuriously upon the United States Government itself, and in a measure paralyzes the action of the Executive in the direction of a sound and consistent policy. The United States Government is embarrassed in its efforts to foster American enterprise and the growth of our commerce through the cultivation of friendly relations with Santo Domingo, by the irritating effects on those relations, and the consequent injurious influence upon that commerce, of frequent interventions. As a method of solution of the complicated problem arbitration has become nugatory, inasmuch as, in the condition of its finances, an award against the Republic is worthless unless its payment is secured by the pledge of at least some portion of the customs revenues. This pledge is ineffectual without actual delivery over of the custom-houses to secure the appropriation of the pledged revenues to the payment of the award. This situation again reacts injuriously upon the relations of the United States with other nations. For when an award and such security are thus obtained, as in the case of the Santo Domingo Improvement Company, some foreign government complains that the award conflicts with its rights, as a creditor, to some portion of these revenues under an alleged prior pledge; and still other governments complain that an award in any considerable sum, secured by pledges of the customs revenues, is prejudicial to the payment of their equally meritorious claims out of the ordinary revenues; and thus controversies are begotten between

the United States and other creditor nations because of the apparent sacrifice of some of their claims, which may be just or may be grossly exaggerated, but which the United States Government cannot inquire into without giving grounds of offence to other friendly creditor nations. Still further illustrations might easily be furnished of the hopelessness of the present situation growing out of the social disorders and the bankrupt finances of the Dominican Republic, where for considerable periods during recent years the bonds of civil society have been practically dissolved.

Under the accepted law of nations foreign governments are within their right, if they choose to exercise it, when they actively intervene in support of the contractual claims of their subjects. They sometimes exercise this power, and on account of commercial rivalries there is a growing tendency on the part of other governments more and more to aid diplomatically in the enforcement of the claims of their subjects. In view of the dilemma in which the Government of the United States is thus placed it must either adhere to its usual attitude of non-intervention in such cases — an attitude proper under normal conditions, but one which in this particular kind of case results to the disadvantage of its citizens in comparison with those of other states — or else it must, in order to be consistent in its policy, actively intervene to protect the contracts and concessions of its citizens engaged in agriculture, commerce, and transportation in competition with the subjects and citizens of other states. This course would render the United States the insurer of all the speculative risks of its citizens in the public securities and franchises of Santo Domingo.

Under the plan in the protocol herewith submitted to the Senate, insuring a faithful collection and application of the revenues to the specified objects, we are well assured that this difficult task can be accomplished with the friendly cooperation and good will of all the parties concerned, and to the great relief of the Dominican Republic.

. . . . . .

In this case, fortunately, the prudent and far-seeing statesmanship of the Dominican Government has relieved us of all trouble. At their request we have entered into the agreement herewith submitted. Under it the custom-houses will be administered peacefully, honestly, and economically, 45 per cent of the proceeds being turned over to the Dominican Government and the remainder being used by the United States to pay what proportion of the debts it is possible to pay on an equitable basis. The Republic will be secured against over-seas aggression. This in reality entails no new obligation upon us, for the Monroe doctrine means precisely such a guaranty on our part.

It is perhaps unnecessary to state that no step of any kind has been taken by the Administration under the terms of the protocol which is herewith submitted.

The Republic of Santo Domingo has by this protocol wisely and patriotically accepted the responsibilities as well as the privileges of liberty, and is showing with evident good faith its purpose to pay all that its resources will permit of its obligations. More than this it cannot do, and when it has done this we should not permit it to be molested. We on our part are simply performing in peaceful manner, not only with the cordial aquiescence, but in accordance with the earnest request of the Government concerned, part of that international duty which is necessarily involved in the assertion of the Monroe doctrine. We are bound to show that we perform this duty in good faith, and without any intention of aggrandizing ourselves at the expense of our weaker neighbours or of conducting ourselves otherwise than so as to benefit both these weaker neighbours and those European powers which may be brought into contact with them. It is in the highest degree necessary that we should prove by our action that the world may trust in our good faith and may understand that this international duty will be performed by us within our own sphere, in the interest not merely of ourselves, but of all other nations, and with strict justice toward all. If this is done a general acceptance of the Monroe Doctrine will in the end surely follow; and this will mean an increase of the sphere in which peaceful measures for the settle-

ment of international difficulties gradually displace those of a warlike character.

We can point with just pride to what we have done in Cuba as a guaranty of our good faith. We stayed in Cuba only so long as to start her aright on the road to self-government, which she has since trod with such marked and distinguished success; and upon leaving the island we exacted no conditions save such as would prevent her from ever becoming the prey of the stranger. Our purpose in Santo Domingo is as beneficent. The good that this country got from its action in Cuba was indirect rather than direct. So it is as regards Santo Domingo. The chief material advantage that will come from the action proposed to be taken will be to Santo Domingo itself and to Santo Domingo's creditors. The advantages that will come to the United States will be indirect, but nevertheless great, for it is supremely to our interest that all the communities immediately south of us should be or become prosperous and stable, and therefore not merely in name but in fact independent and self-governing.

I call attention to the urgent need of prompt action on this matter. We now have a great opportunity to secure peace and stability in the island, without friction or bloodshed, by acting in accordance with the cordial invitation of the governmental authorities themselves. It will be unfortunate from every standpoint if we fail to grasp this opportunity; for such failure will probably mean increasing revolutionary violence in Santo Domingo, and very possibly embarrassing foreign complications in addition. This protocol affords a practical test of the efficiency of the United States Government in maintaining the Monroe doctrine. — (*Message of President Roosevelt to the Senate*, February, 1905.)

Note. — The plan of President Roosevelt was carried out in substance, and for the last few years an American Receiver General of Customs has controlled Dominican finances.

38. Resolution of the Fourth International American Congress establishing the Pan-American Union, 1910

The Fourth International American Conference, assembled at Buenos Aires resolves:

Article I. To maintain under the name of "Union of American Republics" the International Union created by the First and confirmed by the Second and Third Conferences, and under the name of "Pan-American Union," the institution serving as its agent and having its seat in the building of the American Republics in the city of Washington, D.C.

The purposes of the Pan-American Union are the following:

1. To compile and distribute commercial information and prepare commercial reports.
2. To compile and classify information respecting the treaties and conventions between the American Republics and between these and other States, and respecting their legislation in force.
3. To supply information on educational matters.
4. To prepare reports on questions assigned to it by resolutions of the International American Conferences.
5. To assist in obtaining the ratification of the resolutions and conventions adopted by the Conferences.
6. To carry into effect all resolutions the execution of which may have been assigned or may hereafter be assigned to it by the International American Conferences.
7. To act as a permanent committee of the International American Conferences, recommending topics to be included in the programme of the next Conference. These subjects must be communicated to the various Governments forming the Union at least six months before the date of the meeting of the next Conference.
8. To submit within the same period a report to the various Governments on the work of the Pan-American Union during the term covered since the meeting of the last Conference, and also special reports on any matter which may have been referred to it for report.

9. To keep the records of the International American Conferences.

Art. II. The control of the Pan-American Union is vested in a governing board consisting of the diplomatic representatives of all the Governments of said Republics accredited to the Government of the United States of America and the Secretary of State of the United States, upon whom the American Republics have conferred the chairmanship of the governing board.

Art. III. Any diplomatic representative unable to attend the meetings of the board may transmit his vote, stating his reason therefor in writing. A representation by proxy is prohibited.

Any Republic having no representative accredited before the Government of the United States of America may designate a member of the governing board to represent said Republic in the Union of American Republics, and in this case said representative shall have a vote for each country represented.

Art. IV. The governing board shall hold a regular meeting the first Wednesday of every month, excepting the months of June, July, and August, and special meetings at the call of the chairman, issued on his own initiative or at the request of two members of the board.

The attendance of five members at any regular or special meeting shall be sufficient to permit the board to proceed with the transaction of business.

Art. V. In the absence of the Secretary of State of the United States of America the meetings of the governing board shall be presided over by one of the diplomatic representatives in Washington then present by order of rank and seniority and with the title of vice-chairman.

Art. VI. At the regular meeting to be held in November the governing board shall fix by lot the order of precedence among all the representatives of the American Republics forming the Union in order to create a supervisory committee. The first four on this list and the Secretary of State of the United States of America shall constitute the first supervisory committee, and the four members of the committee shall be replaced by

turn, one every year, so that the committee will be totally renewed in four years. The outgoing members shall always be replaced by those following on the list, the same method being observed in the event of resignation.

The Secretary of State of the United States of America shall always be the chairman of the committee.

The supervisory committee shall hold their regular meetings the first Monday of every month, and three members shall be sufficient to constitute a quorum.

Art. VII. There shall be a Director-General, appointed by the governing board, and an assistant director, who shall also discharge the duties of secretary of the governing board.

Art. VIII. The Director-General shall have charge of the administration of the Pan-American Union, in accordance with these fundamental rules, the regulations, and the resolutions of the governing board.

He shall have charge of the correspondence with the Governments of the Union through their diplomatic representatives in Washington, or directly in the absence of such representatives, and with the Pan-American committees. He must attend in an advisory capacity the meetings of the governing board, of the committees, and of the American International Conferences, except in the case of resolution to the contrary.

Art. IX. The personnel of the Pan-American Union, the number of employees, their appointment, duties, and all matters pertaining thereto, shall be determined by the regulations.

Art. X. There shall be in the capital of each of the Republics of this Union a Pan-American committee responsible to the Minister of Foreign Affairs, consisting, if possible, of persons who have been delegates to some International American Conference, their duties being:

(*a*) To obtain the approval of the resolutions adopted by these Conferences.

(*b*) To furnish promptly to the Pan-American Union all the accurate data needed for the preparation of its work.

(*c*) To submit on its own initiative any projects it may deem proper to foster the interests of the Union, and to exercise such

further functions as the respective Governments may deem proper.

These committees shall correspond with the Pan-American Union either directly or through the diplomatic representatives in Washington.

Each Government represented in the Union is entitled to send to the Pan-American Union, at its own expense, a special agent representing the respective Pan-American committee, to furnish such data and reports as may be requested of him, and at the same time to obtain any information that his Government may require.

Art. XI. The Director-General of the Pan-American Union shall submit at the regular meeting in November a detailed budget of the expenses for the following year. This budget, after approval by the governing board, shall be transmitted to the various signatory Governments with a statement of the annual quotas which they are to contribute, these quotas being fixed in proportion to the population of each country.

Art. XII. The Pan-American Union shall issue such publications as the governing board may determine, and shall publish a bulletin at least once a month.

All geographical maps published by the Pan-American Union shall bear a statement thereon that they do not constitute documents approved by the Government of the country to which they apply, nor by the Governments of the countries whose boundaries appear thereon, unless the former and the latter Governments shall have expressly given their approval, which shall in such case also be stated on the map. An identical statement shall be made on the publications of the Union save those of an official nature.

All these publications, with the exception of those determined by the governing board, shall be distributed gratuitously.

Art. XIII. In order to insure the greatest possible accuracy in the publications of the Pan-American Union, each of the signatory States shall transmit directly to the Union two copies of all official documents or publications relating to matters connected with the purposes of the Union, and with the same

object they shall also send one copy to each of the Pan-American Committees.

Art. XIV. All correspondence and publications of the Pan-American Union shall be carried free of charge by the mails of the American Republics.

Art. XV. The Pan-American Union shall be governed by the regulations prepared by the governing board in accordance with these statutes.

Art. XVI. The American Republics bind themselves to continue to support the Pan-American Union for a term of ten years from this date and to pay annually into the treasury of the Pan-American Union their respective quotas. Any of the Republics may cease to belong to the Union of American Republics upon notice to the governing board two years in advance. The Pan-American Union shall continue for successive terms of ten years unless twelve months before the expiration of such term a majority of members of the Union shall have given official notice through the Secretary of State of the United States of America of the desire to withdraw therefrom on the expiration of the term.

Art. XVII. All other rules and regulations contrary to the present resolution are hereby repealed. — (*Supplement to the American Journal of International Law*, January, 1911, pp. 7–11.)

39. Resolution of the Fourth International American Congress concerning the Pan-American Railroad, 1910

The Fourth International American Conference, assembled in Buenos Aires, resolves:

(1) To extend the existence, together with all its powers, of the Committee of the Pan American Railroad in Washington, to which, because of the important services it has rendered, the conference hereby expresses its acknowledgments.

(2) The resolutions adopted by the Third Pan American Conference on this same point are hereby confirmed.

(3) Taking into consideration the great moral and material significance involved in the carrying out of such an important

work, the Conference recommends to the Permanent Committee of the Pan American Railroad in Washington that, as soon as possible, it shall gather together all the studies and technical and financial data necessary for the preparation of a final plan and estimate for the construction of said work; requests the countries interested in the execution thereof to adopt and to communicate to the permanent Committee of the Pan American Railroad the most efficient measures concerning the guaranties or subsidies they are able to offer in order to facilitate the execution of this great common aspiration so that said committee, in view of these communications, may propose a practical method of solving this problem which, if it were entrusted to the isolated action of some of the countries specially interested therein, it would be impossible to carry out, or would at least be done at a very remote date. — (*Supplement to the American Journal of International Law*, January, 1911, p. 11.)

40. Protocol providing for a Conference between the five Central American Republics under the Auspices and Direction of the United States and Mexico, 1907

We, the representatives of the five Central American Republics having met in the city of Washington at the instance of their Excellencies the Presidents of the United States of America and of the United Mexican States in order to devise the means of preserving the good relations among the said Republics and of bringing about permanent peace in those countries, and for the purpose of establishing bases conducive to the attainment of such ends, being duly authorized by our respective governments, have agreed to the following:

Article I

Following a formal invitation which, as is understood, is to be made simultaneously to each of the five Central American Republics by Their Excellencies the Presidents of the United States of America and of the United Mexican States, a Conference of the plenipotentiaries to be appointed for the purpose

by the governments of the said Republics, viz., Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, shall meet during the first fifteen days of November next in the City of Washington for the purpose of discussing the steps to be taken and the measures to be adopted in order to adjust any differences which may exist among said Republics or any of them, and for the purpose of concluding a treaty which shall determine their general relations.

Article II

Their Excellencies the Presidents of the Central American Republics shall invite Their Excellencies the Presidents of the United States of America and of the United Mexican States to appoint, if they deem proper, their respective representatives to lend their good and impartial offices in a purely friendly way towards the realization of the objects of the Conference.

Article III

Until the Conference meets and accomplishes the lofty mission devolving upon it, the five Central American Republics, to wit, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, agree to maintain peace and good relations among one another, and they respectively assume the obligation not to commit or allow to be committed any act which might disturb their mutual tranquillity. To this end they shall refrain from an armed demonstration on their respective frontiers and shall withdraw their naval forces to their territorial waters.

Article IV

If any unforeseen question should unfortunately arise among any of the said Republics pending the meeting of the Conference, and if it should be impossible to adjust it by the friendly means of diplomacy, it is mutually agreed that the parties concerned shall submit the difference to the good counsels of His Excellency the President of the United States of America, or of the President of the United Mexican States or of both Presidents jointly, according to circumstances and in conformity with

the agreement to be concluded for the purpose. — (*Supplement to the American Journal of International Law*, October, 1907, pp. 406–408.)

NOTE. — The Conference met in December, 1907, and concluded a number of Conventions for the establishment of a Central American Court of Justice, a Central American Bureau, a Pedagogical Institute, an Agricultural School, a School of Mines and Mechanics, and a School of Arts and Trades. They also contemplated various other activities. But it is difficult to say how much of these magnificent schemes has survived the wars and revolutions which have since devastated a large part of the territories referred to.

PART III

DOCUMENTS ILLUSTRATING QUESTIONS CONNECTED WITH THE LAW OF WAR

1. Declaration concerning Pacific Blockade voted by the Institute of International Law at Heidelberg, 1887

The establishment of a Pacific Blockade is not allowed by International Law except under the following conditions:

1. Ships under a foreign flag are allowed to enter freely.

2. The Blockade is declared and notified officially, and maintained by an adequate force.

3. Ships of the blockaded power which do not respect the Blockade may be sequestrated. At the termination of the Blockade they are to be restored with their cargoes to their owners, but without compensation. — (*Tableau Général de l'Institut de Droit International*, p. 133.)

2. Declaration of War

THE HAGUE CONVENTION OF 1907 WITH REGARD TO THE OPENING OF HOSTILITIES

Article 1

The Contracting Powers recognize that hostilities between them must not commence without a previous and explicit warning, in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war.

Article 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not be held to affect them until after the receipt of a notification, which may, however, be given by telegraph. Nevertheless, neutral Powers may not

rely on the absence of notification if it be established beyond doubt that they were in fact aware of the existence of a state of war.

Article 3

Article 1 of the present Convention shall take effect in case of war between two or more of the Contracting Powers.

Article 2 applies as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention.

Article 4

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at the Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

Article 5

Non-signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the Government.

The said Government shall immediately forward to all the

other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

Article 6

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

Article 7

In the event of one of the High Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

Article 8

A register kept by the Netherland Ministry for Foreign affairs shall record the date of the deposit of ratifications effected in virtue of Article 4, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 5, paragraph 2) or of denunciation (Article 7, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

3. The Hague Convention of 1907 concerning the Treatment of Certain Enemy Merchantmen at the Outbreak of Hostilities

Article 1

When a merchant-ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port,

it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated to it.

The same principles applies in the case of a ship which has left its last port of departure before the commencement of the war and has entered a port belonging to the enemy while still ignorant that hostilities had broken out.

Article 2

A merchant-ship which, owing to circumstances beyond its control, may have been unable to leave the enemy port within the period contemplated in the preceding Article, or which was not allowed to leave, may not be confiscated.

The belligerent may merely detain it, on condition of restoring it after the war, without payment of compensation, or he may requisition it on condition of paying compensation.

Article 3

Enemy merchant-ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities may not be confiscated. They are merely liable to be detained on condition that they are restored after the war without payment of compensation; or to be requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the persons on board as well as the preservation of the ship's papers.

After touching at a port in their own country or at a neutral port, such ships are subject to the laws and customs of naval war.

Article 4

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

The same principle applies in the case of cargo on board the vessels referred to in Article 3.

Article 5

The present Convention does not refer to merchant-ships which show by their build that they are intended for conversion into warships.

Article 6

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

NOTE. — Articles 7–11, which follow those printed above are the same, *mutatis mutandis*, as Articles 4–8 in the Convention with regard to the Opening of Hostilities, which is printed as No. 2 in this Part (see page 178).

4. The Hague Code for War on Land, 1907

SECTION I — OF BELLIGERENTS

Chapter I — The Status of Belligerent

Article 1

The laws, rights, and duties of war apply not only to the army, but also to militia and volunteer corps fulfilling all the following conditions: —

1. They must be commanded by a person responsible for his subordinates;
2. They must have a fixed distinctive sign recognizable at a distance;
3. They must carry arms openly; and
4. They must conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Article 2

The inhabitants of a territory not under occupation, who, on the approach of the enemy, spontaneously take up arms to

resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

Article 3

The armed forces of the belligerents may consist of combatants and non-combatants. In the case of capture by the enemy, both have the right to be treated as prisoners of war.

Chapter II — Prisoners of War

Article 4

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses and military papers, remain their property.

Article 5

Prisoners of war may be interned in a town, fortress, camp, or other place, and are bound not to go beyond certain fixed limits; but they cannot be placed in confinement except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

Article 6

The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity. The work shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at rates proportional to the work of a similar kind executed by soldiers of the national army or, if there are no such rates in force, at rates proportional to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, deductions on account of the cost of maintenance excepted.

Article 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In default of special agreement between the belligerents, prisoners of war shall be treated as regards rations, quarters, and clothing on the same footing as the troops of the Government which captured them.

Article 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in the power of which they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of their previous escape.

Article 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

Article 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on

their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they may have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

Article 11

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

Article 12

Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and may be put on trial before the Courts.

Article 13

Individuals following an army without directly belonging to it, such as newspaper correspondents or reporters, sutlers or contractors, who fall into the enemy's hands and whom the latter thinks it expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

Article 14

A bureau for information relative to prisoners of war is instituted at the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents on their territory. The business of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as all other information necessary to enable it to make out and

keep up to date an individual return for each prisoner of war. The bureau must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is also the business of the information bureau to gather and keep together all personal effects, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

Article 15

Societies for the relief of prisoners of war, if properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military exigencies and administrative regulations. Representatives of these societies when furnished with a personal permit by the military authorities, may, on giving an undertaking in writing to comply with all measures of order and police which they may have to issue, be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners.

Article 16

Information bureaux enjoy the privilege of free carriage. Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or dispatched by them, shall be exempt from all postal charges in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as any payment for carriage by State railways.

Article 17

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained; the amount shall be refunded by their own Government.

Article 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of their own Church, on the sole condition that they comply with the police regulations issued by the military authorities.

Article 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be followed as regards documents concerning the certification of the death and also as to the burials of prisoners of war, due regards being paid to their grade and rank.

Article 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

Chapter III— The Sick and Wounded

Article 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

Section II — Of Hostilities

Chapter I — Means of Injuring the Enemy, Sieges, and Bombardments

Article 22

Belligerents do not possess an unlimited right as to the choice of means of injuring the enemy.

Article 23

In addition to the prohibitions provided by special Conventions, it is particularly forbidden:

(*a*) To employ poison or poisoned weapons;

(*b*) To kill or wound by treachery individuals belonging to the hostile nation or army;

(*c*) To kill or wound an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion;

(*d*) To declare that no quarter will be given;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(*f*) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as of the distinctive signs of the Geneva Convention;

(*g*) To destroy or seize enemy property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(*h*) To declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to instituted legal proceedings.

A belligerent is likewise forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country, even if they were in the service of the belligerent before the commencement of the war.

Article 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Article 25

The attack or bombardment, by any means whatever, of undefended towns, villages, dwellings, or buildings is forbidden.

Article 26

The officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, except in cases of assault.

Article 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Article 28

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

Chapter II — Spies

Article 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Accordingly, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians entrusted with the delivery of despatches intended either for their own army or for the enemy's army, and carrying out their mission openly. To this class likewise belong persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

Article 30

A spy taken in the act shall not be punished without previous trial.

Article 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts as a spy.

Chapter III — Flags of Truce

Article 32

A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who presents himself under a white flag. He is entitled to inviolability, as also the trumpeter, bugler, or drummer, the flag-bearer and the interpreter who might accompany him.

Article 33

The commander to whom a flag of truce is sent is not obliged in every case to receive it.

He may take all steps necessary in order to prevent the envoy from taking advantage of his mission to obtain information.

In case of abuse, he has the right temporarily to detain the envoy.

Article 34

The envoy loses his rights of inviolability if it is proved in a positive and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery.

Chapter IV — Capitulations

Article 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

Chapter V — Armistices

Article 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article 37

An armistice may be general or local. The first suspends the entire military operations of the belligerent States; the second between certain portions of the belligerent armies only and within a fixed zone.

Article 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or at the time fixed.

Article 39

It rests with the contracting parties to settle, in the terms of the armistice, the relations which may be allowed in the theatre of war with, and between, the civil populations.

Article 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

Article 41

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if there is occasion for it, compensation for the losses sustained.

Section III — Military Authority over the Territory of the Hostile State

Article 42

Territory is considered occupied when actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and is in a position to assert itself.

Article 43

The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter shall do all in his power to restore, and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country.

Article 44

A belligerent is forbidden to compel the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

Article 45

It is forbidden to force the inhabitants of occupied territory to swear allegiance to the hostile Power.

Article 46

Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected.

Private property may not be confiscated.

Article 47

Pillage is expressly forbidden.

Article 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls payable to the State, he shall do so, as far as is

possible, in accordance with the legal basis and assessment in force at the time, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the national Government had been so bound.

Article 49

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, they shall only be applied to the needs of the army or of the administration of the territory in question.

Article 50

No collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

Article 51

No contribution shall be collected except under a written order, and on the responsibility of a General in command.

The collection of the said contribution shall only be effected in accordance, as far as is possible, with the legal basis and assessment of taxes in force at the time.

For every contribution a receipt shall be given to the contributories.

Article 52

Requisitions in kind and services shall not be demanded from local authorities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

Article 53

An army of occupation shall only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

Except in cases governed by naval law, all appliances adapted for the transmission of news, or for the transport of persons or goods, whether on land, at sea, or in the air, depots of arms, and, in general, all kinds of war material may be seized, even if they belong to private individuals, but they must be restored at the conclusion of peace, and indemnities must be paid for them.

Article 54

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They also must be restored at the conclusion of peace, and indemnities paid for them.

Article 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, landed property, forests, and agricultural undertakings belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of such properties, and administer them in accordance with the rules of usufruct.

Article 56

The property of local authorities, as well as that of institutions dedicated to public worship, charity, education, and to science and art, even when State property, shall be treated as private property.

Any seizure or destruction of, or wilful damage to, institutions of this character, historic monuments and works of science and art, is forbidden, and should be made the subject of legal proceedings.

NOTE. — The foregoing Regulations are not part of the Hague Convention of 1907 on *The Laws and Customs of War on Land*. They are instead an Annex to the Convention; and their exact position is defined in the preamble of it, which speaks of them as "intended to serve as general rules of conduct for belligerents in their relations with each other and with populations." But the generality of the rules, and the fact that states have not pledged themselves to their exact wording must not be taken to imply that they are mere pious opinions which commanders in the field may carry into effect or not according to their own reading of the military exigencies of the moment. The assertion in Article 2 of the Convention that the Regulations "are only binding between the Contracting Powers, and only if all the belligerents are parties to the Convention" carries with it the implication that except in abnormal circumstances they are binding. And this view is confirmed by Article 3, which imposes on "a belligerent party which violates the provisions of the said Regulations" a liability to pay compensation, and further declares that "it shall be responsible for all acts committed by persons forming part of its armed forces." Accordingly we find that most of the leading countries of the civilised world have issued codes of Regulations for their armies in time of war; and these not only conform to the principles of the Hague *Règlement* but reproduce in most cases its words. Some of them deal with matters on which the Hague Conference was unable to come to an agreement, such as the treatment of populations who in occupied territory rise against the occupying army. These and similar cases are, according to the preamble of the Convention, not to be "left to the arbitrary judgment of the military Commanders," but to be regulated by "the usages established between civilised nations," "the laws of humanity," and "the requirements of the public conscience." Moreover the provisions of the *Règlement* are spoken of as "inspired by the desire to diminish the evils of war, as far as military necessities will permit," thus shewing that the hard exigencies of actual warfare have been taken into account in framing the rules, and therefore cannot be used to justify disregard of them.

5. The Geneva Convention, 1906

Chapter I — The Wounded and Sick

Article 1

Soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick, by the belligerent in whose power they may be, without distinction of nationality.

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them.

Article 2

Except as regards the treatment to be provided for them in virtue of the preceding Article, the wounded and sick of an army who fall into the hands of the enemy are prisoners of war, and the general provisions of international law concerning prisoners are applicable to them.

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient; in particular they will be at liberty to agree —

To restore to one another the wounded left on the field after a battle;

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery;

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities.

Article 3

After each engagement the Commander in possession of the field shall take measures to search for the wounded, and to insure protection against pillage and maltreatment both for the wounded and for the dead.

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated.

Article 4

Each belligerent shall send as soon as possible to the authorities of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him.

The belligerents shall keep each other mutually informed of any internments and changes, as well as of admissions into hospital and deaths among the wounded and sick in their hands. They shall collect all the articles of personal use, valuables, letters, &c., which are found on the field of battle or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

Article 5

The military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who have responded to this appeal special protection and certain immunities.

Chapter II — Medical Units and Establishments

Article 6

Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents.

Article 7

The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy.

Article 8

The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Article 6:—

1. That the personnel of the unit or of the establishment is armed, and that it uses its arms for its own defence or for that of the sick and wounded under its charge.

2. That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels furnished with an authority in due form.

3. That weapons and cartridges taken from the wounded and not yet handed over to the proper department are found in the unit or establishment.

Chapter III — Personnel

Article 9

The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the Chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Article 8 (2).

Article 10

The personnel of Voluntary Aid Societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding Article, provided always that the first-mentioned personnel shall be subject to military law and regulations.

Each State shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in every case before actually employing them, the names of the Societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies.

Article 11

A recognized Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

A belligerent who accepts such assistance is bound before making any use of it to notify the fact to his adversary.

Article 12

The persons designated in Articles 9, 10, and 11, after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction.

When their assistance is no longer indispensable, they shall be sent back to their army or to their country at such time and by such route as may be compatible with military exigencies.

They shall then take with them such effects, instruments, arms and horses as are their private property.

Article 13

The enemy shall secure to the persons mentioned in Article 9, while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army.

Chapter IV — Material

Article 14

If mobile medical units fall into the hands of the enemy they shall retain their material, including their teams, whatever may be the means of transport and whoever may be the drivers employed.

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick. It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

Article 15

The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick.

Nevertheless, the Commanders of troops in the field may dispose of them, in case of urgent military necessity, provided they make previous arrangements for the welfare of the sick and wounded who are found there.

Article 16

The material of Voluntary Aid Societies which are admitted to the privileges of the Convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war.

Chapter V — Convoys of Evacuation

Article 17

Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions:—

1. A belligerent intercepting a convoy may, if military exigencies demand, break it up, provided he takes charge of the sick and wounded who are in it.

2. In this case, the obligation to send back the medical personnel, provided for in Article 12, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy and furnished with an authority in due form to that effect.

The obligation to restore the medical material, provided for in Article 14, shall apply to railway trains, and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats.

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoys, shall be subject to the general rules of international law.

Chapter VI — The Distinctive Emblem

Article 18

As a compliment to Switzerland, the heraldic device of the red cross on a white ground, formed by reversing the Federal

colours, is retained as the emblem and distinctive sign of the medical service of armies.

Article 19

With the permission of the competent military authority this emblem shall be shown on the flags and armlets (*brassards*), as well as on all the material belonging to the medical service.

Article 20

The personnel protected in pursuance of Articles 9 (paragraph 1), 10, and 11 shall wear, fixed to the left arm, an armlet (*brassard*) with a red cross on a white ground, delivered and stamped by the competent military authority, and accompanied by a certificate of identity in the case of persons who are attached to the medical service of armies, but who have not a military uniform.

Article 21

The distinctive flag of the Convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the Convention, and with the consent of the military authorities. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross.

Article 22

The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Article 11 shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

The provisions of the second paragraph of the preceding Article are applicable to them.

Article 23

The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the Convention.

Chapter VII — Application and Carrying out of the Convention.

Article 24

The provisions of the present Convention are only binding upon the Contracting Powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent Powers is not a party to the Convention.

Article 25

The Commanders-in-chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Article 26

The Signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population.

Chapter VIII — Prevention of Abuses and Infractions

Article 27

The Signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as

may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by Societies other than those which are entitled to do so under the present Convention, and in particular for commercial purposes as a trade-mark or trading mark.

The prohibition of the employment of the emblem or the names in question shall come into operation from the date fixed by each legislature, and at the latest five years after the present Convention comes into force. From that date it shall no longer be lawful to adopt a trade-mark or trading mark contrary to this prohibition.

Article 28

The Signatory Governments also undertake to adopt, or to propose to their legislative bodies, should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts of pillage and maltreatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, of the improper use of the Red Cross flag and armlet (*brassard*) by officers and soldiers or private individuals not protected by the present Convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present Convention.

General Provisions

Article 29

The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at Berne.

When each ratification is deposited a *procès-verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the Contracting Powers.

Article 30

The present Convention shall come into force for each Power six months after the date of the deposit of its ratification.

Article 31

The present Convention, duly ratified, shall replace the Convention of the 22nd August, 1864, in relations between the Contracting States. The Convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present Convention.

Article 32

The present Convention may be signed until the 31st December next by the Powers represented at the Conference which was opened at Geneva on the 11th June, 1906, as also by the Powers, not represented at that Conference, which signed the Convention of 1864.

Such of the aforesaid Powers as shall not have signed the present Convention by the 31st December, 1906, shall remain free to accede to it subsequently. They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the Contracting Powers.

Other Powers may apply to accede in the same manner, but their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the Council from any of the Contracting Powers.

Article 33

Each of the Contracting Powers shall be at liberty to denounce the present Convention. The denunciation shall not take effect until one year after the written notification of it has reached the Swiss Federal Council. The Council shall immediately communicate the notification to all the other Contracting Parties.

The denunciation shall only affect the Power which has notified it.

In faith whereof the Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Geneva the 6th July, 1906, in a single copy, which shall be deposited in the archives of the Swiss Confederation, and of which copies certified as correct shall be forwarded to the Contracting Powers through the diplomatic channel.

NOTE. — This Convention was preceded by a much shorter and less elaborate one in 1864. The experience gained in several great wars convinced the leading powers that changes and additions were necessary. A conference of representatives from thirty-five states met at Geneva in 1906, and the result of their deliberations is the foregoing Convention, which has been ratified by a majority of the powers who negotiated it. Those states who were parties to the original Convention of 1864 and have not accepted that of 1906, are still bound by the former in their wars with one another.

6. The Hague Convention of 1907 for the Adaptation of the Principles of the Geneva Convention to Maritime War

Article 1

Military hospital-ships, that is to say, ships constructed or adapted by States for the particular and sole purpose of aiding the sick, wounded, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and may not be captured while hostilities last.

Such ships, moreover, are not on the same footing as warships as regards their stay in a neutral port.

Article 2

Hospital-ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

Such ships must be provided with a certificate from the proper authorities declaring that the vessels have been under their control while fitting out and on final departure.

Article 3

Hospital-ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the orders of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and on condition also that the latter has notified their name to his adversary at the commencement of or during hostilities, and in any case, before they are employed.

Article 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

Such vessels must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents shall have the right to control and search them; they may refuse to help them, order them off, make them take a certain course, and put a Commissioner on board; they may even detain them, if the situation is such as to require it.

The belligerents shall, as far as possible, enter in the log of the hospital-ships the orders which they give them.

Article 5

Military hospital-ships shall be distinguished by being painted white outside, with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished

by being painted white outside with a horizontal band of red about a metre and a-half in breadth.

The boats of the said ships, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital-ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose orders they are placed.

Hospital-ships which are detained under Article 4 by the enemy must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

Article 6

The distinguishing signs referred to in Article 5 shall only be used, whether in peace or war, for protecting or indicating the ships therein mentioned.

Article 7

In the case of a fight on board a warship, the sick-bays shall be respected and spared as far as possible.

The said sick-bays and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander into whose power they have fallen may, however, if the military situation requires it, apply them to other purposes, after seeing that the sick and wounded on board are properly provided for.

Article 8

Hospital-ships and sick-bays of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick-bays being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, are not sufficient reasons for withdrawing protection.

Article 9

Belligerents may appeal to the charity of the commanders of neutral merchant-ships, yachts, or boats to take the sick and wounded on board and tend them.

Vessels responding to this appeal, and also vessels which may have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case may they be captured for the sole reason of having such persons on board; but, subject to any undertaking that may have been given to them, they remain liable to capture for any violations of neutrality they may have committed.

Article 10

The religious, medical, and hospital staff of any captured ship is inviolable, and its members may not be made prisoners of war. On leaving the ship they are entitled to remove their own private belongings and surgical instruments.

They shall continue to discharge their duties so far as necessary, and can afterwards leave, when the Commander-in-chief considers it permissible.

Belligerents must guarantee to the said staff, while in their hands, the same allowances and pay as are given to the staff of corresponding rank in their own navy.

Article 11

Sick or wounded sailors, soldiers on board, or other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by the captors.

Article 12

Any war-ship belonging to a belligerent may demand the surrender of sick, wounded, or shipwrecked men on board military hospital-ships, hospital-ships belonging to relief societies or to private individuals, merchant-ships, yachts, or boats, whatever the nationality of such vessels.

Article 13

If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, precaution must be taken, so far as possible, that they do not again take part in the operations of the war.

Article 14

The sick, wounded, or shipwrecked of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated may not serve again while the war lasts.

Article 15

The sick, wounded, or shipwrecked, who are landed at a neutral port with the consent of the local authorities, must, in default of arrangement to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them from again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.

Article 16

After every engagement, the two belligerents shall, so far as military interests permit, take steps to look for the sick, wounded, and shipwrecked, and to protect them, as well as the dead, against pillage and improper treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead, shall be preceded by a careful examination of the corpse.

Article 17

Each belligerent shall send, as early as possible, the military marks or documents of identity found on the dead and a list of the names of the sick and wounded picked up by him to the authorities of their country, navy, or army.

The belligerents shall keep each other informed as to interments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, &c., which may be found in the captured ships, or which may have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

Article 18

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Article 19

The Commanders-in-chief of the belligerent fleets shall give detailed directions for carrying out the preceding Articles and for meeting cases not therein provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Article 20

The Signatory Powers shall take the necessary steps in order to bring the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and to make them known to the public.

Article 21

The Signatory Powers likewise undertake to enact or to propose to their Legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

They shall communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

Article 22

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention are only applicable to the forces on board ship.

Article 23

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at the Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform

them at the same time of the date on which it received the notification.

Article 24

Non-Signatory Powers which have accepted the Geneva Convention of the 6th July, 1906, may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of accession, mentioning the date on which it received the notification.

Article 25

The present Convention, duly ratified, shall replace as between Contracting Powers, the Convention of the 29th July, 1899, for the adaptation to naval warfare of the principles of the Geneva Convention.

The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention.

NOTE. — Here follow the usual provisions as to ratification, denunciation, and accession, for which see Part III, No. 2, page 178.

7. Proclamation by the Commander of an Occupying Force in the Boer War

I, C. J. Wessels, Head Commandant of the Burgher Forces of the Orange Free State, on the borders of Griqualand West, having noticed the proclamation of His Honour the State President, dated Bloemfontein, the 14th October, 1899, by which the Commanders-in-Chief of the various divisions of the burgher forces of the Orange Free State are empowered to take measures against those communities, villages, and persons, who act contrary to the usages of war during the war which has been forced upon the people of the South African Republic and Orange Free

State by the Government of Her Majesty the Queen of Great Britain and Ireland;

Taking into consideration the success of the United Republican arms, which has resulted in the occupation of a portion of the British territory known as Griqualand West, comprising the Divisions of Herbert, Hay, Barkly, and Kimberley, excluding the town of Kimberley and its commonage with a radius of four miles beyond those limits;

And whereas it has become necessary to take steps against the communities, villages, and persons who act contrary to the usages of war in the said districts occupied by the burghers and troops of the Orange Free State and South African Republic; and also to take steps with regard to the requisitions (for supplies) which are considered necessary for the needs and maintenance of the burghers and troops of the Orange Free State and South African Republic in the said area;

Have decided, and hereby decree by virtue of the power vested in me by the above proclamation, and declare for general information, the following rules and regulations:—

I. The Martial Law of the Orange Free State, No. 10, 1899, is hereby declared to be in force in the districts and their inhabitants extending over the area at present occupied by the officers, burghers, and troops of the Orange Free State under my command, or which may be occupied later on, with regard to any act which may tend to endanger the safety of the burghers and men, or harm them, or assist the enemy.

II. The said Martial Law is considered to be in force over the whole of a ward, district, or other administrative division, as soon as it is posted up or proclaimed in one of the communities forming a portion thereof.

III. All persons, not forming a portion of the British Army, and who

(*a*) Serve the enemy as spies;

(*b*) Mislead the burghers and men of the South African Republic or Orange Free State when acting as guides;

(*c*) Kill, murder, or plunder persons belonging to one of the Republics, or forming a portion of their following or train;

(*d*) Destroy bridges, or injure telegraph lines, heliographic instruments, railway lines or portions thereof, whereby the said Republics should be impeded, or injury inflicted on their people or property, or should try to repair or improve damage done by the Republican troops to property or institutions, or should burn or damage ammunition, munitions of war, or quarters or camps of the men of the said Republics;

(*e*) Or should take up arms against the men of the Republics, shall be punishable at the discretion of the Krijgsraad (i.e., War-Council) with death, or imprisonment not exceeding 15 years.

IV. The persons entrusted with the prosecution must see to the constitution of a Krijgsraad for enquiry into every case and the passing of sentence.

V. No sentence of death shall be carried out until it has been confirmed by the President of the Orange Free State.

VI. All commandants or commanding officers of divisions acting independently (of each other) have the right to make demands for things necessary for the support of the men and burghers. Other necessaries which may be considered indispensable for the army can only be demanded by the Head Commandant, or the officer acting as Head Commandant.

VII. I further hereby declare that life and property will be guaranteed to all who place themselves under the protection of the Government of the Orange Free State or South African Republic, and their duly appointed officers whose laws and orders they will carry out and obey.

VIII. Nobody who does not act in a hostile manner against the Government of the Orange Free State or South African Republic or their officials, officers, laws, or orders, will experience any harm.

IX. Those who refuse to submit are hereby granted permission to leave the territory occupied by the army within 14 days.

X. All persons who have been driven away from or have left their farms or homes, and who now submit to the regulations herein set forth, may return to their homes.

Given under my hand at Olifantsfontein, this 11th day of November, 1899.

(Signed) C. J. WESSELS,
Head Commandant.

—(State Papers of Cape Colony, *Magisterial Reports*, pp. 69–71, August, 1900.)

8. Japanese Plan for the Military Occupation of the Island of Sakhalin, 1905

1. The extent of the occupation shall comprise the whole of Sakhalin Island, adjacent islands, and territorial waters.

2. The position of army stations during the time of the occupation shall be decided according to circumstances; but the chief military administration offices shall be stationed at Alexandrovski, Zuikoff, and Korsakovski under the charge of the highest officer of the army to be stationed at each of them, their administrative boundaries following the old lines of district demarcation.

3. Any movable property which belongs to the enemy's state and which is useful in military operations, shall be seized as booty.

4. New plans shall not be inaugurated or existing laws and customs altered, save in case of necessity for administration or for military operations.

5. The services of the old administrative officials (those connected with civil suit, collection of taxes, post, telegraph, fisheries, forestry, and mining) may be made use of as they are required, so far as they do not affect the safety of our army; and in this case a certain remuneration shall be paid them. It depends upon circumstances whether these officials shall be employed as officials or as mere advisers. If they avail themselves of their authority for impeding our military operations, they shall be punished according to martial law.

6. Taxes and other imposts shall be collected as far as possible in accordance with the existing rules, and applied towards the expenses of administration. The business of the inhabi-

tants (including neutrals) shall therefore not be prohibited; but if they fail to pay the taxes or imposts, or behave illegally, not only shall their business be prohibited, but a fine may be imposed upon them.

7. No one shall be allowed to keep arms or ammunition unless by special permit from our army.

8. Irregular combatants, individual opposers, and those who speak or behave against our army, shall be punished according to martial law.

9. Prisoners in jail and those recognized as harmful to our army may be sent away into the Maritime Province by certain reasonable means.

10. Those people who desire to return to their home country shall be sent to the Maritime Province.

11. The inhabitants shall not be allowed to hold communication or correspondence with any places outside the island. They shall also not be permitted to hold an assembly or to issue printed matter without permit.

12. The rate of exchange between our paper money and the Russian coins shall be fixed and published.

13. Until the time of completing the occupation, no vessels or persons, other than those useful in military operations, shall be allowed to enter the territorial waters of the island. This rule holds good even after the completion of the occupation for those without a special permit from the Minister of War or the Commander of the Occupation Army. If the Minister of War issues such a permit, the Commander of the Occupation Army shall be notified.

14. Fishing being harmful to military operations, it shall be prohibited, except for those with a special permit granted on account of necessity to the army. — (Takahashi, *International Law Applied to the Russo-Japanese War*, pp. 225, 227.)

9. The Hague Convention of 1907 with Regard to Immunities from Capture in Naval War

Chapter I — Postal Correspondence

Article 1

The postal correspondence of neutrals or belligerents, whatever its official or private character, found at sea on board a neutral or enemy ship is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not, in case of violation of blockade, apply to correspondence proceeding to or from a blockaded port.

Article 2

The inviolability of postal correspondence does not exempt a neutral mail-ship from the laws and customs of naval war respecting neutral merchant-ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

Chapter II — Exemption from Capture of Certain Vessels

Article 3

Vessels employed exclusively in coast fisheries, or small boats employed in local trade, together with their appliances, rigging, tackle and cargo, are exempt from capture.

This exemption no longer applies from the moment that they take any part whatever in hostilities.

The Contracting Powers bind themselves not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

Article 4

Vessels employed on religious, scientific, or philanthropic missions are likewise exempt from capture.

Chapter III — Regulations regarding the Crews of Enemy Merchant-Ships captured by a Belligerent

Article 5

When an enemy merchant-ship is captured by a belligerent, such of its crew as are subjects or citizens of a neutral State are not made prisoners of war.

The same principle applies in the case of the captain and officers, likewise subjects or citizens of a neutral State, if they give a formal undertaking in writing not to serve on an enemy ship while the war lasts.

Article 6

The captains, officers, and members of the crew, if subjects or citizens of the enemy State, are not made prisoners of war, provided that they undertake, on the faith of a written promise, not to engage, while hostilities last, in any service connected with the operations of the war.

Article 7

The names of the persons retaining their liberty under the conditions laid down in Article 5, in the second paragraph, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

Article 8

The provisions of the three preceding articles do not apply to ships taking part in hostilities.

Chapter IV — Final Provisions

Article 9

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

NOTE. — Articles 10–14, which follow are the same, *mutatis mutandis* as Articles 4–8 in the Convention with Regard to the Opening of Hostilities, for which see Part III, No. 2, page 178.

10. Visitation and Search

EXTRACT FROM THE JUDGMENT OF MR. JUSTICE STORY IN THE CASE OF THE *Marianna Flora*

In considering these points, it is necessary to ascertain what are the rights and duties of armed and other ships, navigating the ocean in time of peace. It is admitted, that the right of visitation and search does not, under such circumstances, belong to the public ships of any nation. This right is strictly a belligerent right, allowed by the general consent of nations in time of war, and limited to those occasions. It is true, that it has been held in the courts of this country, that American ships, offending against our laws, and foreign ships, in like manner, offending within our jurisdiction, may, afterwards, be pursued and seized upon the ocean, and rightfully brought into our ports for adjudication. This, however, has never been supposed to draw after it any right of visitation or search. The party, in such case, seizes at his peril. If he establishes the forfeiture, he is justified. If he fails, he must make full compensation in damages.

Upon the ocean, then, in time of peace, all possess an entire equality. It is the common highway of all, appropriated to the use of all; and no one can vindicate to himself a superior or exclusive prerogative there. Every ship sails there with the unquestionable right of pursuing her own lawful business without interruption; but, whatever may be that business, she is bound to pursue it in such a manner as not to violate the rights of others. The general maxim in such cases is, *sic utere tuo, ut non alienum lædas.*

It has been argued, that no ship has a right to approach another at sea; and that every ship has a right to draw round her a line of jurisdiction, within which no other is at liberty to intrude. In short, that she may appropriate so much of the ocean as she may deem necessary for her protection, and prevent any nearer approach.

This doctrine appears to us novel, and is not supported by

any authority. It goes to establish upon the ocean a territorial jurisdiction, like that which is claimed by all nations within cannon-shot of their shores, in virtue of their general sovereignty. But the latter right is founded upon the principle of sovereign and permanent appropriation, and has never been successfully asserted beyond it. Every vessel undoubtedly has a right to the use of so much of the ocean as she occupies, and as is essential to her own movements. Beyond this, no exclusive right has ever yet been recognized, and we see no reason for admitting its existence. Merchant ships are in the constant habit of approaching each other on the ocean, either to relieve their own distress, to procure information, or to ascertain the character of strangers; and, hitherto, there has never been supposed in such conduct any breach of the customary observances, or of the strictest principles of the law of nations. In respect to ships of war sailing, as in the present case, under the authority of their government, to arrest pirates, and other public offenders, there is no reason why they may not approach any vessels descried at sea, for the purpose of ascertaining their real characters. Such a right seems indispensable for the fair and discreet exercise of their authority; and the use of it cannot be justly deemed indicative of any design to insult or injure those they approach, or to impede them in their lawful commerce. On the other hand, it is as clear, that no ship is, under such circumstances, bound to lie by, or wait the approach of any other ship. She is at full liberty to pursue her voyage in her own way, and to use all necessary precautions to avoid any suspected sinister enterprise or hostile attack. She has a right to consult her own safety; but, at the same time, she must take care not to violate the rights of others. She may use any precautions dictated by the prudence or fears of her officers; either as to delay, or the progress or course of her voyage; but she is not at liberty to inflict injuries upon other innocent parties, simply because of conjectural dangers. These principles seem to us the natural result of the common duties and rights of nations navigating the ocean in time of peace. Such a state of things carries with it very different obligations

and responsibilities from those which belong to public war, and is not to be confounded with it. — (II Weaton, 1.)

NOTE. — This was a most extraordinary case. Each party mistook the other for a pirate, and commenced hostile operations in consequence. In reality the *Alligator* was a United States warship, and the *Marianna Flora* an innocent Portuguese merchantman. But the latter behaved in such a way that Lieutenant Stockton, the commander of the former, was justified in deeming her a pirate, whereas her captain had no justification for regarding the *Alligator* as one. The *Marianna Flora* was captured and brought in for adjudication. In the end she was released as innocent; but her claim for damages against Lieutenant Stockton was disallowed. Her misfortunes occurred through her own fault.

11. The Hague Convention of 1907 with Regard to the Establishment of an International Prize Court

PART I. GENERAL PROVISIONS

Article 1

The validity of the capture of a merchant-ship or its cargo is decided before Prize Courts in accordance with the present Convention when neutral or enemy property is involved.

Article 2

Jurisdiction in matters of prize is exercised in the first instance by the Prize Courts of the belligerent captor.

The judgments of these Courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

Article 3

The judgments of national Prize Courts may be brought before the international Prize Court —

(1) When the judgment of the national Prize Courts affects the property of a neutral Power or individual;

(2) When the judgment affects enemy property and relates to —

(*a*) Cargo on board a neutral ship;

(*b*) An enemy ship captured in the territorial waters of a

neutral Power, when that Power has not made the capture the subject of a diplomatic claim;

(*c*) A claim based upon the allegation that the seizure has been effected in violation, either of a conventional stipulation in force between the belligerent Powers, or of an enactment issued by the belligerent captor.

The appeal against the judgment of the National Court can be based on the ground that the judgment was wrong either in fact or in law.

Article 4

An appeal may be brought —

(1) By a neutral Power, if the judgment of the National Tribunals affects its property or the property of its subjects or citizens (Article 3 (1)), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that power. (Article 3 (2) (*b*));

(2) By a neutral individual, if the judgment of the national Court affects his property (Article 3 (1)), subject, however, to the reservation that the Power to which he belongs may forbid him to bring the case before the Court, or may itself undertake the proceedings in his place;

(3) By an individual subject or citizen of an enemy Power, if the judgment of the National Court affects his property in the cases referred to in Article 3 (2), except that mentioned in paragraph (*b*).

Article 5

An appeal may also be brought on the same conditions as in the preceding Article, by persons belonging either to Neutral States or to the enemy, deriving their rights from and entitled to represent an individual qualified to appeal, and who have taken part in the proceedings before the National Court. Persons so entitled may appeal separately to the extent of their interest.

The same principle applies in the case of persons belonging either to neutral States or to the enemy, who derive their rights from and are entitled to represent a neutral Power the property of which was the subject of the decision.

Article 6

When, in accordance with the above Article 3, the International Court has jurisdiction, the national Courts cannot deal with a case in more than two instances. The municipal law of the belligerent captor shall decide whether the case may be brought before the International Court after judgment has been given in first instance or only after an appeal.

If the national Courts fail to give final judgment within two years from the date of capture, the case may be carried direct to the International Court.

Article 7

If a question of law to be decided is covered by a Treaty in force between the belligerent captor and a Power which is itself, or the subject or citizen of which is, a party to the proceedings, the Court is governed by the provisions of the said Treaty.

In the absence of such provisions, the Court shall apply the rules of international law. If no generally recognized rule exists, the Court shall give judgment in accordance with the general principles of justice and equity.

The above provisions apply equally to questions relating to the order and mode of proof.

If, in accordance with Article 3 (2) (*c*), the ground of appeal is the violation of an enactment issued by the belligerent captor, the Court shall enforce the enactment.

The Court may disregard failure to comply with the procedure laid down in the legislation of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

Article 8

If the Court pronounces the capture of the vessel or cargo to be valid, they shall be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the Court shall order restitution of the vessel or cargo, and shall fix, if there is occa-

sion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the Court shall determine the compensation to be given to the owner on this account.

If the national Prize Court pronounced the capture to be null, the Court can only be asked to decide as to the damages.

Article 9

The Contracting Powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay.

Part II. Constitution of the International Prize Court

Article 10

The International Prize Court is composed of Judges and Deputy Judges, who will be appointed by the Contracting Powers, and must all be jurists of known proficiency in questions of international maritime law, and of the highest moral reputation.

The appointment of these Judges and Deputy Judges shall be made within six months after the ratification of the present Convention.

Article 11

The Judges and Deputy Judges are appointed for a period of six years, reckoned from the date on which the notification of their appointment is received by the Administrative Council established by the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899. Their appointments can be renewed.

Should one of the Judges or Deputy Judges die or resign, the same procedure is followed in filling the vacancy as was followed in appointing him. In this case, the appointment is made for a fresh period of six years.

Article 12

The Judges of the International Prize Court are all equal in rank and have precedence according to the date on which the

notification of their appointment was received (Article 11, paragraph 1) and if they sit by rota (Article 15, paragraph 2), according to the date on which they entered upon their duties. When the date is the same, the senior in age takes precedence.

The Deputy Judges when acting are in the same position as the Judges. They rank, however, after them.

Article 13

The Judges enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country.

Before taking their seat, the Judges must take an oath, or make a solemn affirmation before the Administrative Council, to discharge their duties impartially and conscientiously.

Article 14

The Court is composed of fifteen Judges; nine Judges constitute a quorum.

A Judge who is absent or prevented from sitting is replaced by the Deputy Judge.

Article 15

The Judges appointed by the following Contracting Powers: Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia, are always summoned to sit.

The Judges and Deputy Judges appointed by the other Contracting Powers sit by rota as shown in the table annexed to the present Convention; their duties may be performed successively by the same person. The same Judge may be appointed by several of the said Powers.

Article 16

If a belligerent Power has, according to the rota, no Judge sitting in the Court, it may ask that the Judge appointed by it should take part in the settlement of all cases arising from the war. Lots shall then be drawn as to which of the Judges entitled to sit according to the rota shall withdraw. This

arrangement does not affect the Judge appointed by the other belligerent.

Article 17

No Judge may sit who has been a party, in any way whatever, to the sentence pronounced by the National Courts, or has taken part in the case as counsel or advocate for one of the parties.

No Judge or Deputy Judge may, during his tenure of office, appear as agent or advocate before the International Prize Court, nor act for one of the parties in any capacity whatever.

Article 18

The belligerent captor is entitled to appoint a naval officer of high rank to sit as Assessor, but with no voice in the decision. A neutral Power, which is a party to the proceedings or the subject or citizen of which is a party, has the same right of appointment; if in applying this last provision more than one Power is concerned, they must agree among themselves, if necessary by lot, on the officer to be appointed.

Article 19

The Court elects its President and Vice-President by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are equal, by lot.

Article 20

The Judges of the International Prize Court are entitled to travelling allowances in accordance with the regulations in force in their own country, and in addition receive, while the Court is sitting or while they are carrying out duties conferred upon them by the Court, a sum of 100 Netherland florins per diem.

These payments are included in the general expenses of the Court dealt with in Article 47, and are paid through the International Bureau established by the Convention of the 29th July, 1899.

The Judges may not receive from their own Government or from that of any other Power any remuneration in their capacity of members of the Court.

Article 21

The International Prize Court sits at the Hague and may not, except in circumstances beyond its control, be transferred elsewhere without the consent of the belligerents.

Article 22

The Administrative Council fulfils the same functions with regard to the International Prize Court as with regard to the Permanent Court of Arbitration, but only Representatives of Contracting Powers shall be members of it.

Article 23

The International Bureau acts as registry to the International Prize Court and shall place its offices and staff at the disposal of the Court. It has the custody of the archives and carries out the administrative work.

The Secretary-General of the International Bureau acts as Registrar.

The necessary secretaries to assist the Registrar, translators, and shorthand writers are appointed and sworn in by the Court.

Article 24

The Court determines which language it shall use and the languages the employment of which shall be authorized before it.

The official language, however, of the National Courts which have had cognizance of the case may always be employed before the Court.

Article 25

Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

Article 26

A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a Court of Appeal or a High Court of one of the Contracting States, or a lawyer practising before a similar Court, or lastly, a professor of law at one of the higher teaching centres of those countries.

Article 27

For the service of all notices, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on the territory of which the service is to be carried out. The same principle applies in the case of steps being taken to procure evidence.

Requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its Municipal law, allow. They cannot be rejected unless the Power in question considers them calculated to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power within the territory of which it is meeting.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

Part III. Procedure in the International Prize Court

Article 28

An appeal to the International Prize Court is entered by means of a written declaration made in the National Court which has already dealt with the case or addressed to the International Bureau; in the latter case the appeal may be entered by telegram.

The period within which the appeal must be entered is fixed at 120 days, counting from the day the decision is delivered or notified (Article 2, paragraph 2).

Article 29

If the notice of appeal is entered in the National Court, such Court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International Bureau.

If the notice of appeal is sent to the International Bureau, the Bureau will immediately inform the National Court, when possible by telegraph. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual the International Bureau will immediately inform by telegraph the appellant's Government, in order to enable it to avail itself of the rights given by the second paragraph of Article 4.

Article 30

In the case provided for in Article 6, paragraph 2, the notice of appeal can be addressed to the International Bureau only. It must be entered within thirty days of the expiry of the period of two years.

Article 31

If the appellant does not enter his appeal within the period laid down in Articles 28 or 30, it shall be rejected without discussion.

Provided that if he can show that he was prevented from so doing by circumstances beyond his control, and that the appeal was entered within sixty days after such circumstances had ceased to operate, the Court may, after hearing the respondent, grant relief from the effect of the above provision.

Article 32

If the appeal has been entered in time, a certified copy of the notice of appeal is forthwith officially transmitted by the Court to the respondent.

Article 33

If, in addition to the parties who are before the Court, there are other parties concerned who are entitled to appeal, or if,

in the case referred to in Article 29, paragraph 3, the Government which has received notice of an appeal has not announced its decision, the Court, before dealing with the case, will await the expiry of the period laid down in Articles 28 or 30.

Article 34

The procedure before the International Court comprises two distinct phases: the written *pleadings* and oral *discussions*.

The written *pleadings* consist of the deposit and exchange of cases, counter-cases, and, if necessary, of replies, of which the order is fixed by the Court, as also the periods within which they must be delivered. The parties annex thereto all papers and documents of which they intend to make use.

A certified copy of every document produced by one party must be communicated to the other party through the medium of the Court.

Article 35

After the close of the *pleadings*, a public sitting is held on a day fixed by the Court.

At this sitting the parties state their view of the case both as to the law and as to the facts.

The Court may, at any stage of the proceedings, suspend the speeches of counsel, either at the request of one of the parties, or on their own initiative, in order that supplementary evidence may be obtained.

Article 36

The International Court may order the supplementary evidence to be taken either in the manner provided by Article 27, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or intimidation.

If steps are to be taken for the purpose of obtaining evidence by members of the Court outside the territory where it is sitting, the consent of the foreign Government must be obtained.

Article 37

The parties receive notice to attend every stage of the proceedings and receive certified copy of the Minutes.

Article 38

The *discussions* are under the direction of the President or Vice-President, or, in case they are absent or cannot act, of the senior Judge present.

The Judge appointed by a belligerent party may not preside.

Article 39

The *discussions* take place in public, subject to the right of a Government which is a party to the case to demand that they be held in private.

They are recorded in Minutes. These Minutes are signed by the President and Registrar, and are the only authentic record.

Article 40

If a party does not appear, despite the fact that he has been duly cited, or if a party fails to comply with some step within the period fixed by the Court, the case proceeds without that party, and the Court gives judgment in accordance with the material at its disposal.

Article 41

The Court officially notifies to the parties judgments or orders made in their absence.

Article 42

The Court takes into consideration in arriving at its decision all the facts, evidence, and verbal statements.

Article 43

The Court considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the Judges present. If the number of Judges is even and equally divided, the vote

of the junior Judge in the order of precedence laid down in Article 12, paragraph 1, is not counted.

Article 44

The judgment of the Court must state the reasons on which it is based. It recites the names of the Judges taking part in it, and also of the Assessors, if any; it is signed by the President and Registrar.

Article 45

The judgment is delivered in open Court, the parties concerned being present or duly summoned to attend; the judgment is officially communicated to the parties.

When this communication has been made, the Court transmits to the National Prize Court the record of the case, together with copies of the various decisions arrived at and of the Minutes of the proceedings.

Article 46

Each party pays its own costs.

The party against whom the Court decides bears, in addition, the costs of the trial, and also pays 1 per cent. of the value of the subject-matter of the case as a contribution to the general expenses of the International Court. The amount of these payments is fixed in the judgment of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to an amount fixed by the Court, for the purpose of guaranteeing the eventual fulfilment of the two obligations mentioned in the preceding paragraph. The Court is entitled to postpone the opening of the proceedings until the security has been furnished.

Article 47

The general expenses of the International Prize Court are borne by the Contracting Powers in proportion to their share in the composition of the Court as laid down in Article 15 and in the annexed Table. The appointment of Deputy Judges does not involve any contribution.

The Administrative Council applies to the Powers for the funds requisite for the working of the Court.

Article 48

When the Court is not sitting, the duties conferred upon it by Article 32, Article 34, paragraphs 2 and 3, Article 35, paragraph 1, and Article 46, paragraph 3, are discharged by a delegation of three Judges appointed by the Court. This delegation decides by a majority of votes.

Article 49

The Court itself draws up its own rules of procedure, which must be communicated to the Contracting Powers.

It will meet to draw up these rules within a year of the ratification of the present Convention.

Article 50

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Netherland Government, to the Contracting Powers, which will confer together as to the measures to be adopted.

Part IV. Final Provisions

Article 51

The present Convention does not apply as of right except when the belligerent Powers are all parties to the Convention.

It is further understood that an appeal to the International Prize Court can only be brought by a Contracting Power or the subject or citizen of a Contracting Power.

An appeal is only admitted under Article 5 when both the owner and the person entitled to represent him are equally Contracting Powers or the subjects or citizens of Contracting Powers.

Article 52

The present Convention shall be ratified and the ratifications shall be deposited at the Hague as soon as all the Powers mentioned in Article 15 and in the Table annexed are in a position to do so.

The deposit of the ratifications shall take place, in any case, on the 30th June, 1909, if the Powers which are ready to ratify furnish nine Judges and nine Deputy Judges to the Court, duly qualified to constitute a Court. If not, the deposit shall be postponed until this condition is fulfilled.

A Minute of the deposit of the ratifications shall be drawn up, of which a certified copy shall be forwarded, through the diplomatic channel, to each of the Powers referred to in the first paragraph.

Article 53

The Powers referred to in Article 15 and in the Table annexed are entitled to sign the present Convention up to the date of the deposit of the ratifications contemplated in paragraph 2 of the preceding Article.

After this deposit, they can at any time accede to it, purely and simply. A Power wishing to accede, notifies its intention in writing to the Netherland Government, transmitting to it at the same time the act of accession, which shall be deposited in the archives of the said Government. The latter shall send, through the diplomatic channel, a certified copy of the notification and of the act of accession to all the Powers referred to in the preceding paragraph, informing them of the date on which it has received the notification.

Article 54

The present Convention shall come into force six months from the deposit of the ratifications contemplated in Article 52, paragraphs 1 and 2.

The accessions shall take effect sixty days after the notification of such accession has been received by the Netherland

Government, or as soon as possible on the expiry of the period contemplated in the preceding paragraph.

The International Court shall, however, have jurisdiction to deal with prize cases decided by the National Courts at any time after the deposit of the ratifications or of the receipt of the notification of the accessions. In such cases, the period fixed in Article 28, paragraph 2, shall only be reckoned from the date when the Convention comes into force as regards a power which has ratified or acceded.

Article 55

The present Convention shall endure for twelve years from the date at which it comes into force, as determined by Article 54, paragraph 1, even for the Powers acceding to it subsequently.

There shall be tacit prolongation for the term of six years unless this Convention is denounced.

Denunciation must be notified in writing, one year at least before the expiry of each of the periods mentioned in the two preceding paragraphs, to the Netherland Government, which will inform all the other Contracting Powers.

The denunciation shall only operate in respect of the denouncing Power. The Convention shall remain in force in the case of the other Contracting Powers, provided that their share in the appointment of Judges be still sufficient to allow the work of the Court to be discharged by nine Judges and nine Deputy Judges.

Article 56

In case the present Convention is not in operation as regards all the Powers referred to in Article 15 and the annexed Table, the Administrative Council shall draw up a list on the lines of that Article and Table of the Judges and Deputy Judges through whom the Contracting Powers share in the composition of the Court. The times allotted by the said Table to Judges who are summoned to sit in rota will be redistributed between the different years of the six-year period in such a way that, as far as possible,

the number of the Judges of the Court in each year shall be the same. If the number of Deputy Judges is greater than that of the Judges, the number of the latter can be completed by Deputy Judges chosen by lot among those Powers which do not nominate a Judge.

The list drawn up in this way by the Administrative Council shall be notified to the Contracting Powers. It shall be revised when the number of these Powers is modified as the result of accessions or denunciations.

The change resulting from an accession is not made until the 1st January after the date on which the accession takes effect, unless the acceding Power is a belligerent Power, in which case it can demand to be at once represented in the Court, the provision of Article 16 being, moreover, applicable if necessary.

When the total number of Judges is less than eleven, seven Judges form a quorum.

Article 57

Two years before the expiry of each period referred to in paragraphs 1 and 2 of Article 55, any Contracting Power may demand a modification of the provisions of Article 15 and of the annexed Table, as regards its participation in the composition of the Court. The demand shall be addressed to the Administrative Council, which will examine it and submit to all the Powers proposals as to the measures to be adopted. The Powers shall inform the Administrative Council of their decision with the least possible delay. The result shall be communicated at once, and one year and thirty days at least before the expiry of the said period of two years, to the Power which made the demand.

In such circumstances, the modifications adopted by the Powers shall come into force from the commencement of the fresh period.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at the Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the

Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers designated in Article 15 and in the Table annexed.

NOTE. — Owing to various causes the Court provided for in this Convention has not yet been brought into existence. Legislation was required in Great Britain in order to give it jurisdiction over British cases; and the House of Lords threw out the Bill of the Government. The controversy which arose over the Declaration of London (see page 333) retarded the agreement as to blockade and contraband of war which the maritime states desired to see before they gave power to a Court to decide according to "the general principles of justice and equity" such cases as were not covered by recognised rules of International Law (see Article 7). And lastly the susceptibilities of several of the smaller states caused them, when signing the Convention, to enter reservations against Article 15. It was this Article which provided that the Judges appointed by eight Great Powers should always have a place among the fifteen Judges whicl. compose the Court while the appointees of the other powers were to fill up the remaining seven seats by rota, according to a table annexed to the Convention. The establishment of a strong International Tribunal, with jurisdiction in certain cases over the ships and sailors of all civilised states, would be a great step forward in the development of judicial organs for the Society of Nations, and its decisions would constitute an invaluable body of authoritative case-law.

12. Hague Convention of 1907 with Regard to the Conversion of Merchantmen into Warships

Article I

A merchant-ship converted into a warship cannot have the rights and duties appertaining to vessels having that status unless it is placed under the direct authority, immediate control, and responsibility of the Power, the flag of which it flies.

Article II

Merchant-ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

Article III

The commander must be in the service of the State and duly commissioned by the proper authorities. His name must figure on the list of the officers of the fighting fleet.

Article IV

The crew must be subject to military discipline.

Article V

Every merchant-ship converted into a war-ship is bound to observe in its operations the laws and customs of war.

Article VI

A belligerent who converts a merchant-ship into a war-ship must, as soon as possible, announce such conversion in the list of its war-ships.

Article VII

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

NOTE. — Articles 8–12 contain the provisions in respect of ratification, notification and registration, which are to be found in Articles 4–8 of the Convention of 1907 relative to the Opening of Hostilities (see No. 2 of Part III, page 178). It will be noticed that the question of the places where the conversion may be effected is left untouched. The Contracting Powers could not agree about it, and stated in the preamble that it remained outside the scope of the Convention, and was in no way affected by the rules laid down. The point at issue is whether conversion can be permitted to take place on the high seas. The Naval Conference of 1908–1909 endeavoured in vain to settle it. Consequently the Declaration of London, which was drawn up at the Conference, is silent on the subject.

13. The Hague Convention of 1907 with Regard to the Use of Automatic Submarine Contact Mines

Article 1

It is forbidden:

1. To lay unanchored automatic contact mines, unless they be so constructed as to become harmless one hour at most after the person who laid them has ceased to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

Article 2

The laying of automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping, is forbidden.

Article 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless after a limited time has elapsed, and, should the mines cease to be under observation, to notify the danger zones as soon as military exigencies permit, by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

Article 4

Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must give notice to mariners in advance of the places where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

Article 5

At the close of the war, the Contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

Article 6

The Contracting Powers which do not at present own perfected mines of the description contemplated in the present Convention, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert the *matériel* of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

Article 7

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

NOTE. — The usual provisions as to ratification, notification and accession follow. They are printed in No. 2 of Part III. But in this case further rules are laid down. Article 11 provides that "the present Convention shall remain in force for seven years"; and Article 12 declares that the Contracting Powers will reopen the matter six months before the expiration of this period "in the event of the question not having been already taken up and settled by the Third Peace Conference." The Convention is very imperfect, and there is little doubt that many of those concerned in drawing it up were ashamed of their own work. They agreed to compromise after compromise, till little of any value was left.

14. The Hague Convention of 1907 with Regard to Bombardments by Naval Forces in Time of War

Chapter I — Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings

Article 1

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour.

Article 2

Military works, military or naval establishments, depôts of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and ships of

war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

The commander incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed to the enemy, it is nevertheless understood that the prohibition to bombard the undefended town holds good, as in the case given in the first paragraph, and the commander shall take all due measures in order that the town may suffer as little harm as possible.

Article 3

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

Such requisitions shall be proportional to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in ready money; if not, receipts shall be given.

Article 4

The bombardment of undefended ports, towns, villages, dwellings, or buildings, on account of failure to pay money contributions, is forbidden.

Chapter II — General Provisions

Article 5

In bombardments by naval forces all necessary steps must be taken by the commander to spare as far as possible buildings

dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, provided that they are not used at the time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white.

Article 6

Unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities.

Article 7

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

Chapter III — Final Provisions

Article VIII

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Note. — Articles 9–13 which follow set forth the usual rules as to ratification, notification etc., which may be found at the end of No. 2 of Part III.

15. The Hague Declaration of 1907 prohibiting the Discharge of Projectiles and Explosives from Balloons

The Undersigned, Plenipotentiaries of the Powers invited to the Second International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868, and being desirous of renewing the Declaration of The Hague of the 29th July, 1899, which has now expired,

Declare:

The Contracting Powers agree to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them.

It shall cease to be binding from the moment when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A Protocol shall be drawn up recording the receipt of the ratifications of which a duly certified copy shall be sent, through the diplomatic channel, to all the Contracting Powers.

Non-Signatory Powers may accede to the present Declaration. To do so, they must make known their accession to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall only operate on the expiry of one year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only operate in respect of the denouncing Power.

Note. — Of the six Great Powers of Europe only two, Great Britain and Austria-Hungary, have signed this Declaration. Of the great military Powers of the world only one, Austria-Hungary, has signed it. Since it is not binding unless both sides in a war have accepted it, there will be few conflicts on land in which it has any chance of observance. Moreover the vast advances made in the art of aërial navigation since 1907, and their general adoption for military and naval purposes, have sensibly diminished whatever prospect there was of rescuing the air from the domain of destruction. The best that can be hoped for in present circumstances is the exemption of undefended places from a rain of projectiles coming out of the air-space above them.

16. The Declaration of St. Petersburg, 1868

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That not only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes (14 ounces) which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg, by sending Delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the Contracting or Acceding Parties thereto, in case of war between two or more of themselves; it is not applicable with regard to non-Contracting Parties or Parties who shall not have acceded to it.

It will also cease to be obligatory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to

maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

17. Hague Convention of 1907 for the Pacific Settlement of International Disputes

Part I — The Maintenance of General Peace

Article 1

With a view of obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

Part II — Good Offices and Mediation

Article 2

In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Article 3

Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the contending parties as an unfriendly act.

Article 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 5

The duties of the mediator are at an end when once it is declared, either by one of the contending parties or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Article 6

Good offices and mediation undertaken either at the request of the contending parties or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

Article 7

The acceptance of mediation cannot, in default of agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation takes place after the commencement of hostilities, the military operations in progress are not interrupted, in default of agreement to the contrary.

Article 8

The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, in default of agreement to the contrary, may not exceed thirty days, the contending States cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers. These Powers shall use their best efforts to settle the dispute.

In case of a definite rupture of pacific relations, these Powers remain jointly charged with the task of taking advantage of any opportunity to restore peace.

Part III — International Commissions of Inquiry

Article 9

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Article 10

International Commissions of Inquiry are constituted by special agreement between the contending parties.

The Inquiry Convention defines the facts to be examined; it determines the manner and period within which the Commission is to be formed and the extent of the powers of the Commissioners.

It also determines, if there is occasion for it, where the Commission is to meet, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint Assessors, the Inquiry Convention shall determine the mode of their selection and the extent of their powers.

Article 11

If the Inquiry Convention has not determined where the Commission is to meet, it shall meet at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the Parties.

Unless the Inquiry Convention has specified the languages to be employed, the question shall be decided by the Commission.

Article 12

In default of agreement to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

Article 13

Should one of the Commissioners or one of the Assessors, should there be any, either die, resign, or be unable for any reason whatever to act, the same procedure is followed in filling his place which was followed in appointing him.

Article 14

The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

Article 15

The International Bureau of the Permanent Court of Arbitration acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

Article 16

If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings

of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the custody of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

Article 17

In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

Article 18

The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention and shall arrange all the formalities required for dealing with the evidence.

Article 19

On the inquiry both sides must be heard. At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

Article 20

The Commission is entitled, with the assent of the parties, to move temporarily to any place where it considers it may be useful to have recourse to taking evidence by this means, or to send thither one or more of its members. Permission must be obtained from the State on the territory of which evidence has to be taken in this way.

Article 21

Every ascertainment of facts, and every investigation on the spot, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

Article 22

The Commission is entitled to ask from either party for such explanations and information as it thinks fit.

Article 23

The parties undertake to afford to the Commission of Inquiry, within the widest limits they may think practicable, all the means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts at issue.

They undertake to make use of the means at their disposal under their municipal law, to secure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

If the witnesses or experts are unable to appear before the Commission, the parties shall arrange for their evidence to be taken before the qualified officials of their own country.

Article 24

For the service of all notices by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of such Power. The same principle applies in the case of steps being taken on the spot in order to procure evidence.

Requests for this purpose are to be executed so far as the means which the Power applied to possesses under municipal law, allow. They cannot be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will also be entitled in all cases to have recourse to the intervention of the Power on the territory of which it meets.

Article 25

The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in

every case, through the Government of the State in the territory of which they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the Commission.

Article 26

The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or elicit information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

Article 27

The witness must give his evidence without being allowed to read any written proof. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

Article 28

A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which shall be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to sign it.

Article 29

The agents are authorized in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

Article 30

The Commission considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the Commission.

If a member declines to vote, the fact must be recorded in the Minutes.

Article 31

The sittings of the Commission are not public, nor are the Minutes and documents connected with the inquiry published, except in virtue of a decision of the Commission taken with the consent of the parties.

Article 32

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

Article 33

The Report is signed by all the members of the Commission.

If one of the members refuse to sign, the fact is mentioned but the validity of the Report is not affected.

Article 34

The Report of the Commission is read in open Court, the agents and counsel of the parties being present or duly summoned to attend.

A copy of the Report is furnished to each party.

Article 35

The Report of the Commission, being limited to a finding of fact, has in no way the character of an Arbitral Award. It leaves to the parties entire freedom as to the effect to be given to the finding.

Article 36

Each party pays its own expenses and an equal share of the expenses of the Commission.

Part IV — International Arbitration

Chapter I — The System of Arbitration

Article 37

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

Article 38

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most equitable means of arranging disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes regarding the above-mentioned questions, the Contracting Powers should, in that case, have recourse to arbitration, in so far as circumstances permit.

Article 39

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Article 40

Independently of general or particular Treaties expressly stipulating recourses to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view of extending obligatory arbitration to all

cases which they may consider it possible to submit to such arbitration.

Chapter II — The Permanent Court of Arbitration

Article 41

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and acting, in default of agreement to the contrary between the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 42

The Permanent Court can deal with all arbitration cases, unless the parties agree to institute a special Tribunal.

Article 43

The seat of the Permanent Court is at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has the custody of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a duly certified copy of any arbitration agreement arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws regulations, and documents indicating the execution, in due course, of the Awards given by the Court.

Article 44

Each Contracting Power selects four persons at the most, of known competence in questions of International Law, of the

highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus selected are inscribed as members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person may be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

Should a member of the Court die or resign, the same procedure is followed in filling his place which was followed in appointing him. In this case the appointment is made for a fresh period of six years.

Article 45

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal which shall decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the Arbitration Tribunal by direct agreement between the parties, the following course shall be pursued: —

Each party appoints two Arbitrators, of whom one only may belong to its own nation or be chosen from among the persons selected by it as members of the Permanent Court. These Arbitrators together choose an Umpire.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by agreement between the parties.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come

to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not belonging to the nation of either of them. Which of the candidates thus presented shall be Umpire is determined by lot.

Article 46

As soon as the Tribunal has been constituted, the parties notify to the Bureau their determination to have recourse to the Court, the text of their *Compromis* (see Article 52), and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the *Compromis*, and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the Tribunal, in the performance of their duties and when outside their own country, enjoy diplomatic privileges and immunities.

Article 47

The Bureau is authorized to place its office and staff at the disposal of the Contracting Powers for the use of any special body of Arbitrators.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed to have recourse to the Court.

Article 48

The Contracting Powers consider it their duty, if an acute conflict threatens to arise between two or more of them, to remind such Powers that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention and the advice given to them, in the highest interests of peace,

to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

In case of dispute between two Powers one of them may always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to the arbitration.

The Bureau must at once inform the other Power of the declaration.

Article 49

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs who acts as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise with regard to the business of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned, the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the staff, and the expenditure. The Report likewise contains a summary of the more important contents of the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

Article 50

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the acceding Powers shall be reckoned from the date on which their accession takes effect.

Chapter III — Arbitration Procedure

Article 51

With a view of encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are to apply to arbitration procedure except in so far as other rules shall have been agreed on by the parties.

Article 52

The Powers which have recourse to arbitration sign a *Compromis,* in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The *Compromis* likewise defines, if there is occasion for it, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, the place of meeting the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

Article 53

The Permanent Court is competent to settle the *Compromis,* if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of: —

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a *Compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *Compromis* from the competence of the Court. Recourse

cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to obligatory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question;

2. A dispute arising from contract debts claimed from one Power by another Power as due to its subjects or citizens, and for the settlement of which the offer of arbitration has been accepted. This provision is not applicable if acceptance is subject to the condition that the *Compromis* should be settled in some other way.

Article 54

In the cases contemplated in the preceding Article, the *Compromis* shall be settled by a Commission consisting of five members selected in the manner laid down in Article 45, paragraphs 3 to 6.

The fifth member is *ex officio* President of the Commission.

Article 55

The duties of Arbitrator may be conferred on a single Arbitrator or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the composition of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

Article 56

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

Article 57

The Umpire is *ex officio* President of the Tribunal.

When the Tribunal does not include an Umpire, it appoints its own President.

Article 58

When the *Compromis* is settled by a Commission, as contemplated in Article 54, and in default of agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

Article 59

Should one of the Arbitrators either die, resign, or be unable for any reason whatever to act, the same procedure is followed in filling his place which was followed in appointing him.

Article 60

The Tribunal meets at The Hague, unless some other place is selected by the parties.

The Tribunal may only meet in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the assent of the parties.

Article 61

Unless the *Compromis* has specified the languages to be employed, the question shall be decided by the Tribunal.

Article 62

The parties are entitled to appoint special agents to attend the Tribunal, whose duty it is to act as intermediaries between themselves and the Tribunal.

They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by them for the purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which has appointed them members of the Court.

Article 63

As a general rule, arbitration procedure comprises two distinct phases: written *pleadings* and *vivâ voce discussions.*

The written *pleadings* consist of the communication by the respective agents to the members of the Tribunal and the opposing party, of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents referred to in the cause. This communication shall be made either directly or through the intermediary of the International Bureau in the order and within the time fixed by the *Compromis*.

The time fixed by the *Compromis* may be extended by mutual agreement between the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The *discussions* consist of the *vivâ voce* arguments of the parties before the Tribunal.

Article 64

A duly certified copy of every document produced by one party must be communicated to the other party.

Article 65

Unless special circumstances arise, the Tribunal does not meet until the *pleadings* are closed.

Article 66

The *discussions* are under the directions of the President.

They are not public unless it be so decided by the Tribunal, with the assent of the parties.

They are recorded in Minutes drawn up by the Secretaries appointed by the President. These Minutes are signed by the President, and by one of the Secretaries and are the only authentic record.

Article 67

After the close of the *pleadings*, the Tribunal is entitled to exclude from the discussion all fresh papers or documents which one party may wish to submit to it without the consent of the other.

Article 68

The Tribunal is free to take into consideration fresh papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In that case, the Tribunal has the right to require the production of such papers or documents, but is obliged to make them known to the opposing party.

Article 69

The Tribunal may also call upon the agents of the parties to furnish all necessary papers and explanations. The Tribunal takes note of any refusal.

Article 70

The agents and the counsel of the parties are authorized to present verbally to the Tribunal all the arguments they may consider expedient in support of their case.

Article 71

They are entitled to raise objections and points. The decisions of the Tribunal thereon are final and cannot form the subject of any subsequent discussion.

Article 72

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussion, are to be regarded as an expression of opinion by the Tribunal as a whole or by its members in particular.

Article 73

The Tribunal is authorized to determine its own competence in interpreting the *Compromis* as well as the other Acts and documents which may be appealed to in the matter, and in applying the principles of law.

Article 74

The Tribunal is entitled to make orders of procedure for the conduct of the case, to decide the forms, order, and time in which each party must present its final arguments, and to arrange all the formalities required for taking evidence.

Article 75

The parties undertake to supply the Tribunal, within the widest limits they may think practicable, with all the information required for deciding the dispute.

Article 76

For the service of all notices by the Tribunal in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of such Power. The same principle shall apply in the case of steps being taken on the spot in order to procure evidence.

Requests for this purpose are to be executed as far as the means which the Power applied to possesses under municipal law allow. They cannot be rejected unless the Power in question considers them likely to impair its sovereign rights or its safety.

The Tribunal will also be entitled in all cases to act through the Power within the territory of which it meets.

Article 77

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

Article 78

The Tribunal considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the Tribunal.

Article 79

The Award must state the reasons on which it is based. It recites the names of the Arbitrators and is signed by the President and by the Registrar, or the Secretary acting as Registrar.

Article 80

The Award is read in open Court, the agents and counsel of the parties being present or duly summoned to attend.

Article 81

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitely and without appeal.

Article 82

Any difference arising between the parties as to the interpretation and execution of the Award shall, in default of agreement to the contrary, be submitted to the decision of the Tribunal which pronounced the Award.

Article 83

The parties may in the *Compromis* reserve the right to demand the revision of the Award.

In that case and in default of agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. Such demand may only be made on the ground of the discovery of some new fact which is calculated to exercise a decisive influence upon the Award, and which, at the time when the discussion was closed, was unknown to the Tribunal and to the party demanding revision.

Proceedings for revision can only be instituted on a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *Compromis* fixes the period within which the demand for revision must be made.

Article 84

The Award is not binding except on the parties to the proceedings.

When there is a question as to the interpretation of a Convention of which other Powers are signatories, the parties to the proceedings shall inform all the Signatory Powers in good time. Each of these Powers is entitled to intervene in the proceeding. If one or more avail themselves of the right, the interpretation given by the Award is equally binding on them.

Article 85

Each party pays its own expenses and an equal share of the expenses of the Tribunal.

Chapter IV — Arbitration by Summary Procedure

Article 86

With a view of facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and with the reservation that the provisions of Chapter III apply so far as they are not inconsistent with these rules.

Article 87

Each of the contending parties appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being of the nationality of either of them; which of the candidates thus proposed shall be the Umpire is then determined by lot.

The Umpire presides over the Tribunal. Decisions are given by a majority of votes.

Article 88

In default of previous agreement, the Tribunal, when constituted, settles the time within which the two parties shall submit their respective cases to it.

Article 89

Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government appointing him.

Article 90

The proceedings are conducted exclusively in writing. Each party, however, is entitled to demand the calling of witnesses and experts. The Tribunal, on its part, has the right to ask for *viva voce* explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

Part V — Final Provisions

Article 91

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

Article 92

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first

deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall in the cases contemplated in the preceding paragraph inform them at the same time of the date on which it received the notification.

Article 93

Non-Signatory Powers which have been invited to the Second Peace Conference may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

Article 94

The conditions on which the Powers not invited to the Second Peace Conference may accede to the present Convention shall form the subject of a subsequent agreement between the Contracting Powers.

Article 95

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

Article 96

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

Article 97

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Contracting Powers.

NOTE. — There is little to append to the text of this Convention unless a treatise on it were added, which for obvious reasons is impossible here. It is, however, desirable to say that, if there is a general acceptance by the powers of the proposals now before them in the name of the United States of America (June, 1914), a new and, it is to be hoped, potent means for the peaceful settlement of international disputes will be added to those already in existence.

The suggestion was made by Mr. William J. Bryan, the United States Secretary of State, soon after his accession to office in 1913. He proposed that two or more Powers should agree among themselves to refer all dis-

putes they could not settle by diplomatic means to an International Commission for investigation and report, and should bind themselves not to go to war until the Report of the Commission had been received. It was further suggested that a year should be granted to the Commissioners for the exercise of their functions, and that during this period the parties to the dispute should not make any increase in their warlike forces, unless danger from a third power was threatened. These proposals were embodied in a treaty, signed on August 7, 1913, between the United States and the Republic of Salvador; and this treaty was but the first of a series which had reached to nearly a dozen by the end of the year. Each International Commission was to consist of five members, two chosen by each of the disputing Governments, one of them from its own citizens and the other from a third country, and the fifth selected by common agreement between the two Governments. Negotiations are still going on. Most of the Powers are favourably disposed; though there is a disposition in some quarters to drop the mutual promise of the parties not to increase their naval or military forces pending the preparation of the Report of the Commission. This is not an essential part of the plan. The great things are to obtain an impartial Report, and to secure a delay for passions to cool. These things being gained, few states would go to war in cold blood at the end of a year, with a document staring them in the face, signed by their own Commissioners and recommending a peaceful way out of the dispute.

18. The Hague Convention of 1907 respecting the Limitation of the Employment of Force for the Recovery of Contract Debts

Article 1

The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its subjects or citizens.

This undertaking is, however, not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer renders the settlement of the *Compromis* impossible, or, after the arbitration, fails to comply with the award.

Article 2

It is further agreed that the arbitration mentioned in the second paragraph of the preceding Article shall be subject to the procedure laid down in Part IV, Chapter 3, of the Conven-

tion of The Hague for the Pacific Settlement of International Disputes. The award shall determine, except where otherwise agreed between the parties, the validity of the claim, the amount of the debt, and the time and mode of payment.

NOTE. — The remaining Articles give the usual provisions about ratification, denunciation, etc., all of which may be found in Part III, No. 2. The Convention has an importance out of all proportion to its length. It establishes something closely resembling obligatory arbitration by making the freedom of the debtor state from armed attack on the part of the creditor state depend upon its willingness not only to accept arbitration, but also to put no obstacle in its way when accepted and to carry out the award when given. But on the other hand it leaves the creditor state free to make or not to make an offer of arbitration, as it pleases. It is probably but a beginning, which may end in some system of compulsory procedure before an International Court in many kinds of international disputes.

19. Draft of Hague Convention of 1907 concerning the Creation of a Judicial Arbitration Court

PART I — CONSTITUTION OF THE JUDICIAL ARBITRATION COURT

Article 1

With the view of promoting the cause of arbitration, the Contracting Powers agree to constitute, without derogation to the Permanent Court of Arbitration, a Judicial Arbitration Court, of free and unrestricted access, composed of Judges representing the various juridical systems of the world, and capable of insuring continuity in the jurisprudence of arbitration.

Article 2

The Judicial Arbitration Court is composed of Judges and Deputy Judges chosen from persons of the highest moral reputation, and all fulfilling conditions qualifying them in their respective countries, to occupy high legal posts, or as jurists of recognized competence in matters of International Law.

The Judges and Deputy Judges of the Court are appointed, as far as possible, from the members of the Permanent Court of

Arbitration. The appointment shall be made within six months after the ratification of the present Convention.

Article 3

The Judges and Deputy Judges are appointed for a period of twelve years, reckoned from the date on which the appointment is notified to the Administrative Council created by the Convention for the Pacific Settlement of International Disputes. Their appointments can be renewed.

Should one of the Judges, or Deputy Judges die or resign, the same procedure is followed in filling the vacancy as was followed in appointing him. In this case, the appointment is made for a fresh period of twelve years.

Article 4

The Judges of the Judicial Arbitration Court are equal amongst themselves, and have precedence according to the date of the notification of their appointment. The Judge who is senior in point of age takes precedence when the date of notification is the same.

The Deputy Judges when acting are in the same position as the Judges. They rank, however, after the latter.

Article 5

The Judges enjoy diplomatic privileges and immunities in the performance of their duties, and when outside their own country.

Before taking their seat, the Judges and Deputy Judges shall take an oath, before the Administrative Council, or make a solemn affirmation to discharge their duties impartially and conscientiously.

Article 6

The Court annually nominates three Judges to form a special delegation and three more to replace them if the former are unable to act. They are eligible for re-election. The election is by ballot. The persons who secure the largest number of

votes are considered elected. The delegation elects its own President, who, in default of a majority, is appointed by lot.

A member of the delegation cannot act when the Power which appointed him, or to which he belongs, is one of the parties.

The members of the delegation shall wind up the business submitted to them, even if the period for which they have been appointed Judges has expired.

Article 7

A Judge may not act judicially in any case in which he has, in any way whatever, taken part in the decision of a National Tribunal, of a Tribunal of Arbitration, or of a Commission of Inquiry, or has figured in the suit as counsel or advocate for one of the parties.

A Judge cannot act as agent or advocate before the Judicial Arbitration Court or the Permanent Court of Arbitration, before a Special Tribunal of Arbitration or a Commission of Inquiry, nor act therein for one of the parties in any capacity whatsoever so long as his appointment lasts.

Article 8

The Court elects its President and Vice-President by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority and, in case the votes are equal, by lot.

Article 9

The Judges of the Judicial Arbitration Court receive an annual salary of 6,000 Netherland florins. This salary is paid at the end of each half-year, reckoned from the date on which the Court meets for the first time.

In the exercise of their duties during the sessions or in the special cases covered by the present Convention, they receive the sum of 100 florins per diem. They are further entitled to receive a travelling allowance fixed in accordance with the Regulations existing in their own country. The provisions of the present paragraph are applicable also to a Deputy Judge when acting for a Judge.

These emoluments are included in the general expenses of the Court dealt with in Article 33, and are paid through the International Bureau created by the Convention for the Pacific Settlement of International Disputes.

Article 10

The Judges may not accept from their own Government or from that of any other Power any remuneration for services connected with their duties in their capacity of members of the Court.

Article 11

The seat of the Judicial Arbitration Court is at The Hague, and cannot be transferred elsewhere, except in circumstances beyond its control.

The delegation may choose, with the assent of the parties concerned, another place of meeting, if special circumstances render such a step necessary.

Article 12

The Administrative Council fulfils the same functions with regard to the Judicial Arbitration Court as with regard to the Permanent Court of Arbitration.

Article 13

The International Bureau acts as registry to the Judicial Arbitration Court, and shall place its offices and staff at the disposal of the Court. It has the custody of the archives and carries out the administrative work.

The Secretary-General of the Bureau acts as Registrar.

The necessary secretaries to assist the Registrar, translators and shorthand writers are appointed and sworn in by the Court.

Article 14

The Court meets in session once a year. The session opens the third Wednesday in June and lasts until all the business on the agenda has been transacted.

The Court does not meet in session if the delegation con-

siders that such meeting is unnecessary. A Power may insist that the session shall be held if it is party in a case actually pending before the Court, the pleadings in which are closed, or about to be closed.

When necessary, the delegation may summon the Court in extraordinary session.

Article 15

A Report of the work of the Court shall be drawn up every year by the delegation. This Report shall be forwarded to the Contracting Powers through the International Bureau. It shall also be communicated to the Judges and Deputy Judges of the Court.

Article 16

The Judges and Deputy Judges of the Judicial Arbitration Court may also be appointed Judges and Deputy Judges in the International Prize Court.

PART II — JURISDICTION AND PROCEDURE

Article 17

The Judicial Arbitration Court can deal with all cases submitted to it, in virtue either of a general undertaking to have recourse to arbitration or of a special agreement.

Article 18

The delegation can —

(1) Decide the cases of arbitration referred to in the preceding Article, if the parties agree upon the application of the summary procedure, laid down in Part IV, Chapter IV, of the Convention for the Pacific Settlement of International Disputes;

(2) Hold an inquiry under and in accordance with Part III of the said Convention, in so far as such an inquiry is intrusted to the delegation by the joint accord of the parties. With the assent of the parties, and as an exception to Article 7, paragraph 1, the members of the delegation who have taken part in the inquiry may sit as Judges, if the case in dispute is submitted to the arbitration of the Court or of the delegation itself.

Article 19

The delegation can also settle the *Compromis* referred to in Article 52 of the Convention for the Pacific Settlement of International Disputes if the parties are agreed to have recourse to the Court for the purpose.

It can also do so, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed in the case of—

(1) A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a *Compromis* in all disputes, and not either explicitly or implicitly excluding the settlement of the *Compromis* from the jurisdiction of the delegation. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of questions which can be submitted to obligatory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

(2) A dispute arising from contract debts claimed from one Power by another Power as due to its subjects or citizens, and for the settlement of which the offer of arbitration has been accepted. This provision is not applicable if the acceptance is subject to the condition that the *Compromis* should be settled in some other way.

Article 20

Each of the parties concerned may nominate a Judge of the Court to take part, with power to vote, in the examination of the case submitted to the delegation.

If the delegation acts as a Commission of Inquiry, this task may be intrusted to persons other than the Judges of the Court. The travelling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them.

Article 21

The Contracting Powers alone may have access to the Judicial Arbitration Court set up by the present Convention.

Article 22

The Judicial Arbitration Court follows the rules of procedure laid down in the Convention for the Pacific Settlement of International Disputes, except in so far as the procedure is prescribed in the present Convention.

Article 23

The Court determines which language it shall use and the languages the employment of which shall be authorized before it.

Article 24

The International Bureau serves as channel for all communications which may have to be made to the Judges during the interchange of pleadings provided for in Article 63, paragraph 2, of the Convention for the Pacific Settlement of International Disputes.

Article 25

For the service of all notices, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on the territory of which the service is to be carried out. The same principle applies in the case of steps being taken to procure evidence.

Requests for this purpose can only be rejected when the Power applied to considers them calculated to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power within the territory of which it is meeting.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

Article 26

The discussions are under the direction of the President or Vice-President, or, in case they are absent or cannot act, of the senior Judge present.

The Judge appointed by either party cannot preside.

Article 27

The Court considers its decisions in private, and the proceedings remain secret.

All questions are decided by a majority of the Judges present. If the number of Judges is even and equally divided, the vote of the junior Judge, in the order of precedence laid down in Article 4, paragraph 1, is not counted.

Article 28

The judgment of the Court must state the reasons on which it is based. It recites the names of the Judges taking part in it, and is signed by the President and by the Registrar.

Article 29

Each party pays its own costs and an equal share of the costs of the trial.

Article 30

The provisions of Articles 21 to 29 are applicable so far as may be to the procedure before the delegation.

When the right of adding a member to the delegation has been exercised by one of the parties only, the vote of the additional member is not recorded if the votes are equally divided.

Article 31

The general expenses of the Court are borne by the Contracting Powers.

The Administrative Council applies to the Powers to obtain the funds requisite for the working of the Court.

Article 32

The Court itself draws up its own rules of procedure, which must be communicated to the Contracting Powers.

After the ratification of the present Convention the Court shall meet as early as possible in order to draw up these rules, to elect the President and Vice-President, and to appoint the members of the delegation.

Article 33

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated through the Netherland Government to the Contracting Powers, which will confer together as to the measures to be taken.

Part III — Final Provisions

Article 34

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A Protocol of the deposit of each ratification shall be drawn up, of which a duly certified copy shall be sent through the diplomatic channel to all the Signatory Powers.

Article 35

The Convention shall come into force six months after its ratification.

It shall remain in force for twelve years, and shall be tacitly renewed for periods of twelve years, unless denounced.

The denunciation must be notified, at least two years before the expiry of each period, to the Netherland Government, which will inform the other Powers.

The denunciation shall only operate in respect of the denouncing Power. The Convention shall continue in force as far as the other Powers are concerned.

Note. — This "Draft Convention" is confessedly incomplete. It contains no provisions for the constitution of the Court whose functions it describes. The Powers were unable to agree on this question; but they were unwilling to lose the benefit of the agreement they had reached on other points. They therefore placed first among the wishes they expressed in the Final Act of the Hague Conference of 1907 the following aspiration:—

"The Conference calls the attention of the Signatory Powers to the advisability of adopting the annexed Draft Convention for the creation of a Judicial Arbitration Court, and of bringing it into force as soon as an agreement has been reached respecting the selection of the Judges and the constitution of the Court."

The trouble with regard to the constitution of the Court arose from the exaggerated notions of equality entertained by numbers of the lesser states. They claimed not merely equality before the law but equality of influence, condition, and opportunity—a position fatal to any possibility of realising the idea of a rudimentary federal constitution of the Society of Nations, which seems the only way to reconcile the free development of national life with the restraints on individual action in common affairs that are necessary in any form of society. The United States endeavoured to turn the difficulty by suggesting in 1909 that the International Prize Court should be entrusted with the functions ascribed in this Convention to the Judicial Arbitration Court. But up to the present time (June, 1914) the International Prize Court itself has not been constituted. In all probability the question will be left over for the next Hague Conference to deal with. A strong permanent Court is certainly needed to develop the jurisprudence of arbitration on legal lines. But for questions which transcend law and go down to the very roots of national life a tribunal is required which will give weight in its decisions to considerations of equity, humanity, and human progress. Its evolution will not be a short or easy process.

PART IV

DOCUMENTS ILLUSTRATING QUESTIONS CONNECTED WITH THE LAW OF NEUTRALITY

1. The United States Foreign Enlistment Act, 1818

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign Prince, State, Colony, district, or people, in war, by land or by sea, against any Prince, State, Colony, district, or people with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sect. 2. And be it further enacted, That if any person shall within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States, with intent to be enlisted in the service of any foreign Prince, State, Colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: Provided, that this Act shall not be construed to extend to any subject or citizen of any foreign Prince, State, Colony, district or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enter and enlist himself, or hire or retain another subject or citizen of the same

foreign Prince, State, Colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign Prince, State, Colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign Prince, State, Colony, district, or people.

Sect. 3. And be it further enacted, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign Prince, or State, or of any Colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any Colony, district or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanour and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Sect. 4. And be it further enacted, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof,

such persons so offending shall be deemed guilty of a high misdemeanour, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offence, if committed within the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Sect. 5. And be it further enacted, That if any persons shall within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war, cruiser, or other vessel, which, at the time of her arrival within the United States was a ship of war, or cruiser, or armed vessel, in the service of any foreign Prince or State, or of any Colony, district, or people, or belonging to the subjects or citizens of any such Prince or State, Colony, district, or people, the same being at war with any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanour, shall be fined not more than one thousand dollars, and imprisoned not more than one year.

Sect. 6. And be it further enacted, That if any person shall within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not exceeding three thousand dollars, and be imprisoned not more than one year.

Sect. 7. And be it further enacted, That the District Courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sect. 8. And be it further enacted, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this Act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any Court of the United States shall be disobeyed or resisted by any person or persons having custody of any vessel of war, cruiser, or other armed vessel of any foreign Prince, or State, or of any Colony, district, or people, or of any subjects or citizens of any foreign Prince or State, or of any Colony, district, or people, in every case it shall be lawful for the President of the United States, or such other persons as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this Act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

Sect. 9. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which by the law of nations or the Treaties of the United States, they ought not to remain within the United States.

Sect. 10. And be it further enacted, That the owners or

consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property, of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

Sect. 11. And be it further enacted, That the Collectors of the Customs be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, and property of any foreign State, or of any Colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owners shall give such bond and security, as is required of the owners of armed ships by the preceding section of this Act.

Sect. 12. And be it further enacted, That the Act passed on the fifth day of June One thousand seven hundred and ninety-four, entitled "An Act in addition to the Act for the punishment of certain crimes against the United States," continued in force for a limited time, by the Act of the second of March One thousand seven hundred and ninety-seven, and perpetuated by the Act passed on the twenty-fourth of April One thousand eight hundred, and the Act passed on the fourteenth day of June One thousand seven hundred and ninety-seven, entitled "An Act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the Act passed the third day of March One thousand eight hundred and seventeen,

entitled "An Act more effectually to preserve the neutral relations of the United States," be, and the same are hereby severally repealed: Provided nevertheless, that persons having heretofore offended against any of the Acts aforesaid may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the Acts aforesaid shall be affected by such repeal.

Sect. 13. And be it further enacted, That nothing in the foregoing Act shall be constructed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

2. The British Foreign Establishment Act, 1870

Whereas it is expedient to make provisions for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at peace; Be it enacted by the Queen's Most Excellent Majesty, by and with the consent and advice of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: —

Preliminary

1. This Act may be cited for all purposes as 'The Foreign Enlistment Act, 1870.'

2. This Act shall extend to all the dominions of Her Majesty including the adjacent territorial waters.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the Governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act.

Illegal Enlistment

4. If any person without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty, and in this Act referred to as a friendly State, or whether a British subject or not within Her Majesty's dominions induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid — He shall be guilty of an offence against this Act and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. If any person, without the licence of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or go on board any ship with a view of quitting Her Majesty's dominions with the like intent — He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, — He shall be guilty of an offence against this Act, and

shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

7. If the master or owner of any ship, without the licence of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions, any of the following persons, in this Act referred to as illegally enlisted persons, that is to say, —

(1) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the licence of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State;

(2) Any person, being a British subject, who, without the licence of Her Majesty, is about to quit Her Majesty's dominions with the intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State;

(3) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State;

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say, —

(1) The offender shall be punishable by fine and imprisonment or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour; and

(2) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties

to the satisfaction of two justices of peace, or other magistrate or magistrates having the authority of two justices of the peace; and

(3) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

Illegal Shipbuilding and Illegal Expeditions

8. If any person within Her Majesty's dominions, without the licence of Her Majesty, does any of the following Acts; that is to say, —

(1) Builds, or agrees to build or causes to be built, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

(2) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

(3) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

(4) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State;

Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue: —

(1) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour;

(2) The ship in respect of which any such offence is committed, and her equipments, shall be forfeited to Her Majesty; Provided that a person building, causing to be built, or equipping

a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following; (that is to say): —

(1) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done or to be done under the contract as may be required by the Secretary of State;

(2) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the licence of Her Majesty until the termination of such war as aforesaid.

9. Where any ship is built by order of or on behalf of any foreign State when at war with a friendly State, or is delivered to or to the order of such foreign State, or any person who to the knowledge of the person building is an agent of such foreign State, or is paid for by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, unless the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State.

10. If any person within the dominions of Her Majesty, and without the licence of Her Majesty — By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign State at war with any friendly State, —

Such person shall be guilty of an offence against this Act,

and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

11. If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty, —

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue: —

(1) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years.

Illegal Prize

14. If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty in violation of the neutrality of this realm, or captured by any ship which may have been built, equipped, commissioned, or despatched, or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war, so captured as aforesaid, it shall be lawful for the original

owner of such prize, or his agent, or for any person authorized in that behalf by the Government of the foreign State to which such owner belongs, to make application to the Court of Admiralty for seizure and detention of such prize, and the court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal, as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the meantime and until a final order has been made on such application the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandise, and (if the same be of perishable nature, or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such court in the exercise of its ordinary jurisdiction.

General Provision

15. For the purposes of this Act, a licence by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by proclamation of Her Majesty.

Legal Procedure

16. Any offence against this Act shall, for all purposes, of, and incidental to, the trial and punishment of any person guilty of any such offence, be deemed to have been committed, either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

17. Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it is wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the country, city, or place in which the trial is held.

18. The following authorities, that is to say, in the United Kingdom any judge of a superior court, in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term 'warrant,' direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial, in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interest of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if the offence had been committed at such place.

Any warrant for the purpose of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act, shall require the sanction of the Secretary of State, or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other court, and the Court of Admiralty, shall, in addition to any power given to the court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

20. Where any offence against this Act has been committed by any person, by reason whereof a ship, or ship and equipment, or arms and munitions of war has or have become liable to for-

feiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender, in any court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender, because proceedings are instituted for the forfeiture; or to take proceedings for the forfeiture, because proceedings are taken against the offender.

21. The following officers, that is to say, —

(1) Any officer of Customs in the United Kingdom, subject nevertheless to any special or general instructions from the Commissioner of Customs or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade;

(2) Any officer of Customs or public officer in any British possession, subject nevertheless to any special or general instructions from the Governor of such possession;

(3) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instruction from his commanding officer;

(4) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer, may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as 'the local authority,' but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Any officer authorized to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of Customs, or any harbour master or dock master, or any officers having authority by law to make seizures of ships, and may put on

board any ship so seized and detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty, her heirs and successors as against all persons so killed, maimed, or hurt.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has either been condemned or released by process of law, or in manner hereinafter mentioned. The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the court shall, as soon as possible, put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was not, and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not, and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State, or chief executive authority.

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not, and is not being built, commissioned, or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the ship without such security if the Secretary of State or chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appear in the course of the proceedings the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way, in cases where the ship is released by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceeding for the condemnation of

such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign noncommissioned ship despatched from any port of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting-out or equipping of a warlike character has taken place in this country.

24. Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention, upon application to the Court of Admiralty, in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having

issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

25. The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and enquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign State at war with a friendly State, and to search such ship.

26. Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers or jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority within their respective jurisdictions; that is to say, —

(1) In Ireland by the Lord Lieutenant or other the chief governor or governors of Ireland for the time being, or the Chief Secretary to the Lord Lieutenant:

(2) In Jersey by the Lieutenant Governor:

(3) In Guernsey, Alderney, and Sark, and the dependent islands by the Lieutenant Governor:

(4) In the Isle of Man by the Lieutenant Governor:

(5) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorized in pursuance of this Act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man, shall be laid before Parliament.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

28. Subject to the provisions of this Act provided for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be respon-

sible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

29. The Secretary of State shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

Interpretation Clause

30. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say, —

'Foreign State' includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising, or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people: 'Military Service' shall include military telegraphy and any other employment whatever, in or in connection with, any military operation: 'Naval Service' shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store-ship, privateer or ship under letters of marque; and as respects a ship, includes any uses of a ship as a transport, store-ship, privateer or ship under letters of marque:

'United Kingdom' includes the Isle of Man, the Channel Islands, and other adjacent islands: 'British possession' means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom as defined by this Act. 'The Secretary of State' shall mean any one of Her Majesty's principal Secretaries of State: 'The Governor' shall, as respects India, mean the Governor-General or the Governor of any Presidency, and where a British possession consists of several constituent colonies, mean the Governor-General

of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession, it shall mean the officer for the time being administering the government of such possession, also any person acting for or in the capacity of a Governor shall be included under the term 'Governor':

'Court of Admiralty' shall mean the high Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any Vice-Admiralty Court within Her Majesty's dominions: 'Ship' shall include any description of boat, vessel, floating battery, or floating craft; also any description of boat, vessel, or other craft or battery, made to move either on the surface of, or under water, or sometimes on the surface of, and sometimes under water.

'Building' in relation to the ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly:

'Equipping' in relation to a ship, shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly:

'Ship and equipment' shall include a ship and everything in or belonging to a ship:

'Master' shall include any person having the charge or command of a ship.

Repeal of Acts, and Saving Clauses

31. From and after the commencement of this Act, an Act passed in the 59th year of the reign of His Late Majesty King George the Third, chapter 69, entitled 'An Act to prevent the enlistment and engagement of His Majesty's subjects to serve in foreign service, and the fitting-out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence' shall be repealed: Provided that such repeal

shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation, nor the institution of any investigation or legal proceedings or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign State, or give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign State any jurisdiction which it would not have had if this Act had not passed.

33. Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince, State or potentate in Asia, with such leave or licence as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, States or potentates in Asia.

3. British Proclamation of Neutrality in the War of 1904–1905 between Russia and Japan

By the King — A Proclamation

Edward, R. and I.

Whereas We are happily at Peace with all Sovereigns, Powers, and States:

And whereas a State of War unhappily exists between his Majesty The Emperor of All The Russias, and his Majesty The Emperor of Japan, and between their respective Subjects, and others inhabiting within their Countries, Territories, or Dominions:

And whereas We are on Terms of Friendship and Amicable intercourse with each of these Powers, and with their several Subjects and others inhabiting within their Countries, Territories, or Dominions:

And whereas great Numbers of Our Loyal Subjects reside and carry on Commerce, and possess Property and Establishments, and enjoy various Rights and Privileges, within the Dominions of each of the aforesaid Powers, protected by the Faith of Treaties between Us and each of the aforesaid Powers:

And whereas We, being desirous of preserving to Our Subjects the Blessings of Peace, which they now happily enjoy, are firmly purposed and determined to maintain a strict and impartial Neutrality in the said State of War unhappily existing between the aforesaid Powers:

We, therefore, have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation:

And We do hereby strictly charge and command all Our loving Subjects to govern themselves accordingly, and to observe a strict Neutrality in and during the aforesaid War, and to abstain from violating or contravening either the Laws and Statutes of the Realm in this behalf, or the Law of Nations in relation hereto, as they will answer to the contrary at their Peril:

And whereas in and by a certain Statute made and passed in a Session of Parliament holden in the 33rd and 34th year of the reign of Her Late Majesty Queen Victoria, intituled "An Act to Regulate the conduct of Her Majesty's Subjects during the existence of Hostilities between Foreign States with which her Majesty is at peace," it is, among other things, declared and enacted as follows;—

"This Act shall extend to all the Dominions of Her Majesty, including the adjacent territorial Waters:" (Here follows a recitation of sections 4 to 12 of the Foreign Enlistment Act, for which see No. 2 of this Part, pages 286–291.)

And whereas by the said Act it is further provided that Ships built, commissioned, equipped, or despatched in contravention of the said Act, may be condemned and forfeited by Judgment of the Court of Admiralty; and that if the Secretary of State or Chief Executive Authority is satisfied that there is a reasonable and probable cause for believing that a Ship within Our Dominion has been or is being built, commissioned, or equipped,

contrary to the said Act, and is about to be taken beyond the limits of such Dominions, or that a Ship is about to be despatched contrary to the Act, such Secretary of State or Chief Executive Authority shall have power to issue a warrant authorising the seizure and search of such Ship and her detention until she has either been condemned or released by Process of Law. And whereas certain powers of seizure and detention are conferred by the said Act on certain Local Authorities:

Now, in order that none of Our Subjects may unwarily render themselves liable to the Penalties imposed by the said Statute, We do hereby strictly command that no Person or Persons whatsoever do commit any Act, Matter, or Thing whatsoever contrary to the Provisions of the said Statute, upon pain of the several Penalties by the said Statute imposed and of Our high Displeasure.

And We do hereby further warn and admonish all Our Loving Subjects, and all Persons whatsoever entitled to Our Protection, to observe towards each of the aforesaid Powers, their Subjects and Territories, and towards all Belligerents whatsoever with whom We are at Peace, the Duties of Neutrality; and to respect, in all and each of them, the Exercise of Belligerent Rights.

And We hereby further warn all Our Loving Subjects, and all Persons whatsoever entitled to Our Protection, that if any of them shall presume, in contempt of this Our Royal Proclamation, and of Our high Displeasure, to do any Acts in derogation of their Duty as Subjects of a Neutral Power in a War between other Powers, or in violation or contravention of the Law of Nations in that Behalf, as more especially by breaking, or endeavouring to break, any Blockade Lawfully and actually established by or on behalf of either of the said Powers, or by carrying Officers, Soldiers, Despatches, Arms, Ammunition, Military Stores or Materials, or any Article or Articles considered and deemed to be Contraband of War according to the Law of Modern Usages of Nations, for the Use or Service of either of the said Powers, that all Persons so offending, together with their Ships and Goods, will rightfully incur and be justly

liable to hostile Capture, and to the Penalties denounced by the Law of Nations in that Behalf.

And We do hereby give Notice that all Our Subjects and Persons entitled to Our Protection who may misconduct themselves in the Premises will do so at their peril, and of their own wrong; and that they will in no wise obtain any Protection from Us against such Capture or such Penalties as aforesaid, but will, on the contrary, incur Our high Displeasure by such Misconduct.

Given at Our Court at Buckingham Palace, this eleventh day of February, in the year of our Lord one thousand nine hundred and four, and in the fourth year of Our Reign.

GOD SAVE THE KING

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4. British Rules of Neutrality promulgated along with the Proclamation of Neutrality in the Russo-Japanese War of 1904–1905

The Most Honourable the Marquess of Lansdowne to the Lords Commissioners of the Admiralty:—

FOREIGN OFFICE, February 10, 1904.

My Lords, — His Majesty being fully determined to observe the duties of neutrality during the existing state of war between Russia and Japan; being, moreover, resolved to prevent, as far as possible, the use of His Majesty's harbours, ports, and coasts, and the waters within His Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following Rules, which are to be treated and enforced as His Majesty's orders and directions:—

Rule 1. During the continuance of the present state of war, all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of His Majesty's colonies or foreign possessions or dependencies, or of any waters

subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to leave any such port, roadstead, or waters from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of His Majesty.

Rule 2. If there is now in any such port, roadstead, or waters subject to the territorial jurisdiction of the British Crown any ship of war of either belligerent, such ship of war shall leave such port, roadstead, or waters within such time not less than twenty-four hours as shall be reasonable, having regard to all the circumstances and the condition of such ship as to repairs, provisions, or things necessary for the subsistence of her crew; and if after the date hereof any ship of war of either belligerent shall enter any such port, roadstead, or waters, subject to the territorial jurisdiction of the British Crown, such ship shall depart and put to sea within twenty-four hours after her entrance into any such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters, for a longer period than twenty-four hours after her necessary repairs shall have been completed. Provided, nevertheless, that in all cases, in which there shall be any vessels (whether ships of war or merchant ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of His Majesty, there shall be an interval

of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war or merchant ship) of the one belligerent, and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

Rule 3. No ship of war of either belligerent shall hereafter be permitted, while in any such port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer named neutral destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

Rule 4. Armed ships of either belligerents are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of His Majesty's Colonies or possessions abroad.

The Governor or other chief authority of each of His Majesty's territories or possessions beyond the seas shall forthwith notify and publish the above Rules.

I have, etc.,

LANSDOWNE.

NOTE. — The letter given above was sent from the Foreign Office to the Admiralty, Treasury, Home Office, Colonial Office, War Office, India Office, Scottish Office, and Board of Trade.

5. The Hague Convention concerning the Rights and Duties of Neutral Powers and Persons in War on Land

Chapter I — The Rights and Duties of Neutral Powers

Article 1

The territory of neutral Powers is inviolable.

Article 2

Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power.

Article 3

Belligerents are likewise forbidden to:—

(*a*) Erect on the territory of a neutral Power a wireless telegraphy station or any apparatus for the purpose of communicating with belligerent forces on land or sea;

(*b*) Use any installation of this kind established by them for purely military purposes on the territory of a neutral Power before the war, and not previously opened for the service of public messages.

Article 4

Corps of combatants must not be formed, nor recruiting agencies opened, on the territory of a neutral Power, to assist the belligerents.

Article 5

A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of neutrality unless such acts have been committed on its own territory.

Article 6

The responsibility of a neutral Power is not involved by the mere fact that persons cross the frontier individually in order to offer their services to one of the belligerents.

Article 7

A neutral Power is not bound to prevent the export or transit for either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet.

Article 8

A neutral Power is not bound to forbid to restrict the use on behalf of belligerents of telegraph or telephone cables, or of wireless telegraphy apparatus, belonging to it or to Companies or to private individuals.

Article 9

A neutral Power must apply impartially to the belligerents every restriction or prohibition which it may enact in regard to the matters referred to in Articles 7 and 8.

The neutral Power shall see that the above obligation is observed by Companies or private owners of telegraph or telephone cables or wireless telegraphy apparatus.

Article 10

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

Chapter II — Internment of Belligerents and Care of the Wounded in Neutral Territory

Article 11

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and may even confine them in fortresses or in places set apart for the purpose.

It shall decide whether officers may be left free on giving their parole not to leave the neutral territory without permission.

Article 12

In default of special Agreement, the neutral Power shall supply the interned with the food, clothing and relief which the dictates of humanity prescribe.

At the conclusion of peace the expenses caused by the internment shall be made good.

Article 13

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

Article 14

A neutral Power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains or other methods of transport by which they are conveyed shall carry neither combatants nor war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick and wounded of one belligerent brought under these conditions into neutral territory by the other belligerent must be so kept by the neutral Power as to ensure their taking no further part in the military operations. The same duty shall devolve on the neutral State with regard to the sick and wounded of the other army who may be committed to its care.

Article 15

The Geneva Convention applies to the sick and wounded who are interned in neutral territory.

Chapter III — Neutral Persons

Article 16

The subjects or citizens of a State which is not taking part in the war are deemed neutrals.

Article 17

A neutral cannot claim the benefit of his neutrality:

(*a*) If he commits hostile acts against a belligerent;

(*b*) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a subject or citizen of the other belligerent State could be for the same act.

Article 18

The following shall not be considered as acts committed in favour of one belligerent within the meaning of Article 17, letter (*b*):

(*a*) The furnishing of supplies or the making of loans to one of the belligerents, provided that the person so doing neither lives in the territory of the other party nor in the territory occupied by it, and that the supplies do not come from such territory;

(*b*) Services rendered in matters of police or civil administration.

Chapter IV — Railway Material

Article 19

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of Companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except in so far as is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to a corresponding extent railway material coming from the territory of the belligerent Power.

Compensation shall be paid on either side in proportion to the material used, and to the period of usage.

Chapter V — Final Provisions

Article 20

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

NOTE. — Here follow Articles 21–25 giving the usual provisions as to ratification, accession, notification, denunciation, etc. They are printed, *mutatis mutandis*, at the end of No. 2 in Part III. (See page 180.)

6. The Hague Convention of 1907 concerning the Rights and Duties of Neutral Powers in Maritime War

Article 1

Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

Article 2

Any act of hostility, including therein capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

Article 3

When a ship has been captured in the territorial waters of a neutral Power, such Power must, if the prize is still within its jurisdiction, employ the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not within the jurisdiction of the neutral Power, the captor Government, on the demand of the neutral Power, must liberate the prize with its officers and crew.

Article 4

A Prize Court cannot be established by a belligerent on neutral territory or on a vessel in neutral waters.

Article 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries; in particular they may not erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

Article 6

The supply, in any manner, directly or indirectly, of war-ships, supplies, or war material of any kind whatever, by a neutral Power to a belligerent Power, is forbidden.

Article 7

A neutral Power is not bound to prevent the export or transit, for either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet.

Article 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which has been adapted entirely or partly within the said jurisdiction for use in war.

Article 9

A neutral Power must apply to the two belligerents impartially the conditions, restrictions, or prohibitions issued by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid any particular belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

Article 10

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

Article 11

A neutral Power may allow belligerent war-ships to employ its licenced pilots.

Article 12

In default of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

Article 13

If a Power which has received notice of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship to depart within twenty-four hours or within the time prescribed by the local law.

Article 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the time permitted except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the length of time which such vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

Article 15

In default of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

Article 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant-ship flying the flag of its adversary.

Article 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible dealy.

Article 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

Article 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their

arrival, the duration of their permitted stay is extended by twenty-four hours.

Article 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

Article 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

Article 23

A neutral Power may allow prizes to enter its ports and roadstead, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a Prize Court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

Article 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of putting to sea so long as the war lasts, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew so detained may be left in the ship or kept either on another vessel or on land, and may be subjected to such restrictions as it may appear necessary to impose upon them. A sufficient number of men must, however, be always left on board for looking after the vessel.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

Article 25

A neutral Power is bound to exercise such vigilance as the means at its disposal permit to prevent any violation of the provisions of the above Articles occurring in its ports or roadsteads or in its waters.

Article 26

The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the Articles relating thereto.

Article 27

The Contracting Powers shall communicate to each other in due course all statutes, orders, and other enactments defining in their respective countries the situation of belligerent warships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other Contracting Powers.

Article 28

The provisions of the present Convention do not apply except to the Contracting Powers, and then only if all the belligerents are parties to the Convention.

NOTE. — The usual provisions as to ratification, accession, denunciation and registration appear in Articles 29–33, which are the same as Articles 4–8 in the Convention printed as No. 2 in Part III. (See page 179.)

7. Rules with regard to Submarine Cables in Time of War, voted by the Institute of International Law at Brussels in 1902

(1) A submarine cable connecting two neutral territories is inviolable.

(2) A cable connecting the territories of two belligerents, or two parts of the territory of one of the belligerents, can be cut everywhere except in neutral territorial waters, and in neutralized waters.

(3) A cable connecting neutral territory with the territory of one of the belligerents cannot be cut in any case in neutral territorial waters or in neutralized waters.

On the high seas such a cable cannot be cut except within the limits of the line of an effective blockade and under the obligation to reëstablish the cable with as little delay as possible. Such a cable can always be cut on the enemy's territory, and in his territorial waters within a distance of three marine miles from the shore at low water.

(4) It is understood that the liberty of a neutral state to transmit messages does not imply the power to use it or permit its use so as to render assistance to a belligerent.

(5) In all that concerns the application of the preceding rules no difference is to be made between cables belonging to a state and cables belonging to private owners, or between cables that are enemy property and cables that are neutral property. — (*Annuaire*, 1902, pp. 331, 332.)

8. The Rule of War of 1756

In the war which commenced in the year 1756, and was ended by the peace of 1763, France, being hard pressed by our maritime superiority, and unable with safety, either to send the requisite supplies to her West India Islands, or to bring their produce to the European Market under her own mercantile flag, resorted to the expedient of relaxing her colonial monopoly; and admitted neutral vessels, under certain restrictions, to carry

the produce of those islands, to French or foreign ports in Europe. Of course, it was so carried, either really or ostensibly, on neutral account; the object being to avoid capture on the passage.

But the prize courts of Great Britain, regarding this new trade as unwarranted by the rights of neutrality, condemned such vessels as were captured while engaged in it, together with their cargoes; however clearly the property of both might appear to be in those neutral merchants, on whose behalf they were claimed.

As these vessels were admitted to a trade, in which prior to the war, French bottoms only could be employed, they were considered as made French by adoption: but the substantial principle of the rule of judgment was this — "that a neutral has no right to deliver a belligerent from the pressure of his enemy's hostilities, by trading with his colonies in time of war, in a way that was prohibited in time of peace." — (James Stephen, *War in Disguise*, Fourth ed., pp. 12, 13.)

Note. — As long as states of importance exclude foreign vessels from portions of their sea-borne commerce, their coasting trade for instance, and reserve it for their own ships, the question raised by Great Britain in 1756, and again in 1793, will crop up if the trade is thrown open to neutrals during a war or in immediate contemplation of one. At the Naval Conference of London in 1908–1909 Germany brought the matter forward. "It was proposed to treat as an enemy merchant vessel a neutral vessel, making at the time, and with the sanction of the enemy government, a voyage which she has only been permitted to make subsequently to the outbreak of hostilities or during the two preceding months" (*Report of the Drafting Committee of the Conference*). But strong opposition to this proposal was raised at once, notably by the American delegation. It was therefore dropped, and the question remains unsettled.

9. Judgment of the Supreme Court of the United States in the Case of the *Olinde Rodrigues*

What Constitutes an Effective Blockade

Mr. Chief Justice Fuller delivered the opinion of the court.

We are unable to concur with the learned district judge in the conclusion that the blockade of the port of San Juan at

the time this steamship was captured was not an effective blockade.

To be binding, the blockade must be known, and the blockading force must be present; but is there any rule of law determining that the presence of a particular force is essential in order to render a blockade effective? We do not think so, but on the contrary, that the test is whether the blockade is practically effective, and that that is a question, though a mixed one, more of fact than of law.

The fourth maxim of the Declaration of Paris (April 16, 1856) was: "Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy." Manifestly this broad definition was not intended to be literally applied. The object was to correct the abuse, in the early part of the century, of paper blockades, where extensive coasts were put under blockade by proclamation, without the presence of any force, or an inadequate force; and the question of what might be sufficient force was necessarily left to be determined according to the particular circumstances.

This was put by Lord Russell in his note to Mr. Mason of February 10, 1861, thus: "The Declaration of Paris was in truth directed against what were once termed 'paper blockades,' that is, blockades not sustained by any actual force, or sustained by a notoriously inadequate naval force, such as an occasional appearance of a man-of-war in the offing or the like. . . . The interpretation, therefore, placed by her Majesty's Government on the declaration was, that a blockade, in order to be respected by neutrals, must be practically effective. . . . It is proper to add, that the same view of the meaning and effect of the articles of the Declaration of Paris, on the subject of blockades, which is above explained, was taken by the representative of the United States at the Court of St. James (Mr. Dallas) during the communications which passed between the two governments some years before the present war, with a view to the accession of the United States to that declaration." Hall's Int. Law, § 260, p. 730, note.

The quotations from the Parliamentary debates, of May, 1861, given by Mr. Dana in note 233 to the eighth edition of Wheaton on International Law, afford interesting illustrations of what was considered the measure of effectiveness; and an extract is also there given from a note of the Department of Foreign Affairs of France of September, 1861, in which that is defined: "Forces sufficient to prevent the ports being approached without exposure to a certain danger."

In *The Mercurius*, 1 C. Rob. 80, 84, Sir William Scott stated: "It is said, this passage to the Zuyder Zee was not in a state of blockade; but the ship was seized immediately on entering it; and I know not what else is necessary to constitute blockade. The Powers who formed the armed neutrality in the last war, understood blockade in this sense; and Russia, who was the principal party in that confederacy, described a place to be in a state of blockade, when it is dangerous to attempt to enter into it."

And in *The Frederick Molke*, 1 C. Rob. 86, the same great jurist said: "For that a legal blockade did exist, results necessarily from these facts, as nothing farther is necessary to constitute blockade, than that there should be a force stationed to prevent communication, and a due notice, or prohibition given to the party."

Such is the settled doctrine of the English and American courts and publicists, and it is embodied in the second of the instructions issued by the Secretary of the Navy, June 20, 1898, General Order No. 492: "A blockade to be effective and binding must be maintained by a force sufficient to render ingress to or egress from the port dangerous."

Clearly, however, it is not practicable to define what degree of danger shall constitute a test of the efficiency and validity of a blockade. It is enough if the danger is real and apparent.

In *The Franciska*, 2 Spinks, 128, Dr. Lushington, in passing on the question whether the blockade imposed on the port of Riga was an effective blockade, said: "What, then, is an efficient blockade, and how has it been defined, if, indeed, the term 'definition' can be applied to such a subject? One definition

mentioned is, that egress or entrance shall be attended with evident danger; another, that of Chancellor Kent (1 Kent's Com. 146), is, that it shall be apparently dangerous. All these definitions are and must be, from the nature of blockades, loose and uncertain; the maintenance of a blockade must always be a question of degree, — of the degree of danger attending ships going into or leaving a blockaded port. Nothing is further from my intention, nor, indeed, more opposed to my notions of the law of nations, than any relaxation of the rule that a blockade must be efficiently maintained; but it is perfectly obvious that no force could bar the entrance to absolute certainty; that vessels may get in and get out during the night, or fogs, or violent winds, or occasional absence; that it is most difficult to judge from numbers alone."

"It is impossible," says Mr. Hall (260), "to fix with any accuracy the amount of danger in entry which is necessary to preserve the validity of a blockade. It is for the prize courts of the belligerent to decide whether in a given instance a vessel captured for its breach had reason to suppose it to be non-existent; or for the neutral government to examine, on the particular facts, whether it is proper to withhold or to withdraw recognition."

In *The Hoffnung*, 6 C. Rob. 112, 117, Sir William Scott said: "When a squadron is driven off by accidents of weather, which must have entered into the contemplation of the belligerent imposing the blockade, there is no reason to suppose that such a circumstance would create a change of system, since it could not be expected that any blockade would continue many months, without being liable to such temporary interruptions. But when a squadron is driven off by a superior force, a new course of events arises, which may tend to a very different disposition of the blockading force, and which introduces therefore a very different train of presumptions, in favour of the ordinary freedom of commercial speculations. In such case the neutral merchant is not bound to foresee or to conjecture that the blockade will be resumed." Undoubtedly a blockade may be so inadequate, or the negligence of the belligerent in maintaining it

may be of such a character, as to excuse neutral vessels from the penalties for its violation. Thus in the case of an alleged breach of the blockade of the island of Martinique, which had been carried on by a number of vessels on the different stations, so communicating with each other as to be able to intercept all vessels attempting to enter the ports of the island, it was held that their withdrawal was a neglect which "necessarily led neutral vessels to believe these ports might be entered without incurring any risk." *The Nancy*, 1 Acton, 57, 59.

But it cannot be that a vessel actually captured in attempting to enter a blockaded port, after warning entered on her log by a cruiser off that port only a few days before, could dispute the efficiency of the force to which she was subjected.

As we hold that an effective blockade is a blockade so effective as to make it dangerous in fact for vessels to attempt to enter the blockaded port, it follows that the question of effectiveness is not controlled by the number of the blockading force. In other words, the position cannot be maintained that one modern cruiser though sufficient in fact is not sufficient as matter of law.

Even as long ago as 1809, in *The Nancy*, 1 Acton, 63, where the station of the vessel was sometimes off the port of Trinity and, at others, off another port more than seven miles distant, it was ruled that: "Under particular circumstances a single vessel may be adequate to maintain the blockade of one port and co-operate with other vessels at the same time in the blockade of another neighbouring port"; although there Sir William Grant relied on the opinion of the commander on that station that the force was completely adequate to the service required to be performed.

The ruling of Dr. Lushington in *The Franciska*, above cited, was to that effect, and the text-books refer to other instances.

The learned district judge, in his opinion, refers to the treaty between France and Denmark of 1742, which provided that the entrance to a blockaded port should be closed by at least two vessels or a battery on shore; to the treaty of 1760 between Holland and the Two Sicilies prescribing that at least six ships

of war should be ranged at a distance slightly greater than gunshot from the entrance; and to the treaty between Prussia and Denmark of 1818, which stipulated that two vessels should be stationed before every blockaded port; but we do not think these particular agreements of special importance here, and, indeed, Ortolan, by whom they are cited, says that such stipulations cannot create a positive rule in all cases even between the parties, "since the number of vessels necessary to a complete investment depends evidently on the nature of the place blockaded." 2 Ortolan, 4th ed., 330, and note 2.

Nor do we regard Sir William Scott's judgement in *The Arthur*, 1814, 1 Dodson, 423, 425, as of weight in favour of the claimants. In effect the ruling sustained the validity of the maintenance of blockade by a single ship, and the case was thus stated: "This is a claim made by one of his Majesty's ships to share as joint-captor in a prize taken in the river Ems by another ship belonging to his Majesty, for a breach of the blockade imposed by the Order in Council of the 26th of April, 1809. This order was, among others, issued in the way of retaliation for the measures which had been previously adopted by the French Government against the commerce of this country. The blockade imposed by it is applicable to a very great extent of coast, and was never intended to be maintained according to the usual and regular mode of enforcing blockades, by stationing a number of ships and forming as it were an arch of circumvallation around the mouth of the prohibited port. There, if the arch fails in any one part, the blockade itself fails altogether; but this species of blockade, which has arisen out of the violent and unjust conduct of the enemy, was maintained by a ship stationed anywhere in the neighbourhood of the coast, or, as in this case, in the river itself, observing and preventing every vessel that might endeavour to effect a passage up or down the river."

Blockades are maritime blockades, or blockades by sea and land; and they may be either military or commercial, or may partake of the nature of both. The question of effectiveness must necessarily depend on the circumstances. We agree that

the fact of a single capture is not decisive of the effectiveness of a blockade, but the case made on this record does not rest on that ground.

We are of opinion that if a single modern cruiser blockading a port renders it in fact dangerous for other craft to enter the port, that is sufficient, since thereby the blockade is made practically effective.

What then were the facts as to the effectiveness of the blockade in the case before us?

In the proclamation of June 27, 1898, occurs this paragraph: "The United States of America has instituted and will maintain an effective blockade of all the ports on the south coast of Cuba, from Cape Frances to Cape Cruz, inclusive, and also of the port of San Juan, in the island of Porto Rico." Proclamation No. 11, 30 Stat. 34. The blockade thus announced was not of the coast of Porto Rico, but of the port of San Juan, a town of less than 25,000 inhabitants, on the northern coast of Porto Rico, with a single entrance. From June 27 to July 14, 1898, the *Yosemite*, a merchant ship converted into an auxiliary cruiser, blockaded the port. Her maximum speed was fifteen and one-half knots; and her armament ten 5-inch rapid firing guns, six 6-pounders, two 1-pounders, with greatest range of three and one-half miles.

While the *Yosemite* was blockading the port she ran the armed transport *Antonio Lopez* aground six miles from San Juan; gave a number of neutral vessels official notice of the blockade; warned off many from the port; and on the 5th of July, 1898, wrote into the log of the *Olinde Rodrigues*, off San Juan, the official warning of the blockade of San Juan. On July 14 and thereafter the port was blockaded by the armoured cruiser *New Orleans*, whose maximum speed was twenty-two knots, and her armament six 6-inch breech-loading rifles, four 4.7-inch breech-loading rifles, ten 6-pounders, four 1.5-inch guns, corresponding to 3-pounders; four 3-pounders in the tops; four 37-millimetre automatic guns, corresponding to 1-pounders. The range of her guns was five and one-half sea miles or six and a quarter statute miles. If stationary she could command a

circle of thirteen miles in diameter; if moving, at maximum speed, she could cover in five minutes any point on a circle of seventeen miles diameter; and in ten minutes any point on a circle of nineteen miles diameter; her electric searchlights could sweep the sea by night for ten miles distance; her motive power made her independent of winds and currents; in these respects and in her armament and increased range of guns she so far surpassed in effectiveness the old-time war-ships that it would be inadmissible to hold that even if a century ago more than one ship was believed to be required for an effective blockade therefore this cruiser was not sufficient to blockade this port.

Assuming that the *Olindo Rodrigues* attempted to enter San Juan, July 17, there can be no question that it was dangerous for her to do so, as the result itself demonstrated. She had had actual warning twelve days before; no reason existed for the supposition that the blockade had been pretermitted or relaxed; her commander had no right to experiment as to the practical effectiveness of the blockade, and, if he did so, he took the risk; he was believed to be making the attempt, and was immediately captured. In these circumstances the vessel cannot be permitted to plead that the blockade was not legally effective

But we are considering the blockade of the port of San Juan and not of the coast, and while additional vessels to cruise about the island might be desirable in order that the blockade should be positively effective, we think it a sufficient compliance with the obligations of international law if the blockade made egress or ingress dangerous in fact, and that the suggestions of a zealous American naval commander, in anticipation of a conflict of armed forces before San Juan, that the blockade should be brought to the highest efficiency in a military as well as a commercial aspect, cannot be allowed to have the effect of showing that the blockade which did exist was, as to this vessel, ineffective in point of law.

Such being the situation, and the evidence of the ship's officers being explicit that the vessel was on her way to St. Thomas and had no intention of running into San Juan, the de-

cree in her favour must be affirmed on the merits, unless the record elsewhere furnishes evidence sufficient to overcome the conclusion reasonably deducible from the facts above stated.

Counsel for the government insist that the intention of the *Olinde* to run the blockade is necessarily to be inferred from the possession of these bills of health and their alleged concealment and destruction. Doubtless the spoliation of papers, and, though to a less degree, their concealment, is theoretically a serious offence, and authorizes the presumption of an intention to suppress incriminating evidence, though this is not an irrebuttable presumption.

In *The Pizarro*, 2 Wheat. 227, 241, the rule is thus stated by Mr. Justice Story: "Concealment, or even spoliation of papers is not of itself a sufficient ground for condemnation in a prize-court. It is, undoubtedly, a very awakening circumstance, calculated to excite the vigilance, and to justify the suspicions of the court. But it is a circumstance open to explanation, for it may have arisen from accident, necessity, or superior force; and if the party in the first instance fairly and frankly explains it to the satisfaction of the court, it deprives him of no right to which he is otherwise entitled. If, on the other hand, the spoliation be unexplained, or the explanation appear weak or futile; if the cause labour under heavy suspicions, or there be a vehement presumption of bad faith, or gross prevarication, it is made the ground of a denial of further proof, and condemnation ensues from defects in the evidence which the party is not permitted to supply."

The evidence of evil intent must be clear and convincing before a merchant ship belonging to citizens of a friendly nation will be condemned. And on a careful review of the entire evidence, we think we are not compelled to proceed to that extremity.

But, on the other hand, we are bound to say that, taking all the circumstances together and giving due weight to the evidence on behalf of the captors, probable cause for making the capture undoubtedly existed; and the case disclosed does not commend this vessel to the favourable consideration of the court.

Probable cause exists where there are circumstances sufficient to warrant suspicion though it may turn out that the facts are not sufficient to warrant condemnation. And whether they are or not cannot be determined unless the customary proceedings of prize are instituted and enforced. *The Adeline*, 4 Cranch, 244, 285; *The Thompson*, 3 Wall. 155. Even if not found sufficient to condemn, restitution will not necessarily be made absolutely, but may be decreed conditionally as each case requires, and an order of restitution does not prove lack of probable cause. *The Adeline, supra; Jennings v. Carson*, 4 Cranch, 2, 28, 29.

In the statement of Sir William Scott and Sir John Nicholl, transmitted to Chief Justice Jay, then Minister to England, by Sir William Scott, Sept. 10, 1794, "The general principles of proceeding in prize causes, in British Courts of Admiralty, and of the measures proper to be taken when a ship and cargo are brought in as prize within their jurisdictions," are set forth as laid down in an extract from a report made to the King in 1753 "by Sir George Lee, then judge of the Prerogative Court, Dr. Paul, his Majesty's advocate general, Sir Dudley Rider, his Majesty's attorney-general, and Mr. Murray (afterwards Lord Mansfield), his Majesty's solicitor-general"; and many instances are given where in the enforcement of the rules "the law of nations allows, according to the different degrees of misbehaviour, or suspicion, arising from the fault of the ship taken, and other circumstances of the case, costs to be paid, or not to be received by the claimant, in case of acquittal and restitution." Wheaton on Captures, Appendix, 309, 311, 312; Pratt's Story's Notes, p. 35.

In *The Appollon*, 9 Wheat. 362, 372, Mr. Justice Story said: "No principle is better settled in the law of prize than the rule that probable cause will not merely excuse, but even, in some cases, justify a capture. If there be probable cause, the captors are entitled, as of right, to an exemption from damages; and if the case be of strong and vehement suspicion, or requires further proof to entitle the claimant to restitution, the law of prize proceeds yet farther, and gives the captors their costs and expenses in proceeding to adjudication."

Section 4639 of the Revised Statutes contemplates that, under circumstances, all costs and expenses shall remain charged on the captured vessel though she be restored, and this court has repeatedly held that damages and costs will be denied where there was probable cause for seizure, and that sometimes costs will be awarded to the captors. *The Venus*, 5 Wheat. 127; *The Thompson*, 3 Wall. 155; *The Springbok*, 5 Wall. 1; *The Dashing Wave*, 5 Wall. 170; *The Sir William Peel*, 5 Wall. 517; *The Peterhoff*, 5 Wall. 28, 61, 62.

In *The Dashing Wave*, Chief Justice Chase said: "We think it was the plain duty of a neutral claiming to be engaged in trade with Matamoras, under circumstances which warranted close observation by the blockading squadron, to keep his vessel, while discharging or receiving cargo, so clearly on the neutral side of the boundary line as to repel, so far as position could repel, all imputation of intent to break the blockade. He had no right to take, voluntarily, a position in the immediate presence of the blockading fleet, from which merchandise might be so easily introduced into the blockaded region. We do not say that neglect of duty, in this respect, on the part of the brig, especially in the absence of positive evidence that the neglect was wilful, calls for condemnation; but we cannot doubt that under the circumstances described, capturing and sending in for adjudication was fully warranted."

In *The Springbok*, the ship was restored, but costs and damages were not allowed because of the misconduct of the master.

In *The Peterhoff*, payment of costs and expenses by the ship was decreed as a condition of restitution. *The Peterhoff* was captured by the United States vessel of war *Vanderbilt* on suspicion of intent to run the blockade and of having contraband on board. Her captain refused to take his papers to the *Vanderbilt* and, in addition, papers were destroyed and a package was thrown overboard. *The Peterhoff* was searched, and it is stated in the opinion: "The search led to the belief on the part of the officers of the *Vanderbilt* that there was contraband on board, destined to the enemy. This belief, it is now apparent, was warranted. It was therefore the duty of the captors to bring

The Peterhoff in for adjudication, and clearly they are not liable for the cost and expenses of doing so." The court then commented on the destruction of papers, and the throwing overboard of the package, in regard to which it was unable to credit the representations of the captain, but in view of the other facts in the case, did not extend the effect of the captain's conduct and the incriminating circumstances to condemnation.

The case before us falls plainly within these rulings. This vessel had gone into San Juan on July 4th, although the captain had heard of the blockade at St. Thomas, but he says he had not been officially notified of it; he telegraphed to the consul at San Juan to know, and was answered that they had received no official notice from Washington that the port was blockaded; he also heard while in San Juan that "it would be blockaded some future time, but that was not officially." The vessel was boarded and warned by the *Yosemite* on July 5th, and the warning entered on her log. This imposed upon her the duty to avoid approaching San Juan, on her return, so nearly as to give just cause of suspicion, yet she so shaped her course as inevitably to invite it.

When the *New Orleans* succeeded the *Yosemite*, her commander was informed of the facts by his predecessor, and knew that whatever the right of the *Olinde Rodrigues* to be in those waters, she could not lawfully place herself so near the interdicted port as to be able to break the blockade with impunity. But when he sighted her the ship was on a course to all appearance directly into that port, and steadily pursuing it. And when he signalled, the *Olinde Rodrigues* apparently did not obey, but seemingly persisted on her course, and that course would in a few moments have placed her within the range of the guns of Morro and of the shore batteries. In fact, when the shot was fired she was within the range of the Morro's guns. The evidence is overwhelming that she did not change her course until after the shot was fired, even though she may have stopped as soon as she saw the signal. The turning point into the Culebra or Virgin Passage was perhaps forty miles to the eastward, and while she could have passed the port of San Juan on the course

she was on, it would have been within a very short distance. The disregard of her duty to shun the port and not approach it was so flagrant that the intention to break the blockade was to be presumed, though we do not hold that that was a presumption *de jure*.

The ship's log was not produced until three hours after she was boarded, and it now appears, that the papers furnished the boarding officers, "said to be all the ship's papers," did not include two Spanish bills of health in which San Juan was entered as the vessel's destination. These were destroyed after the ship reached Charleston, and, were, therefore, in the ship's possession when the other papers were delivered. Had they been shown, as they should have been, can it be denied that they would have furnished strong corroboration of criminal intent? Or that their destruction tended to make a case of strong and vehement suspicion?

The entire record considered, we are of opinion that restitution of the *Olinde Rodrigues* should be awarded, without damages, and that payment of the costs and expenses incident to her custody and preservation, and of all costs and expenses in the cause except the fees of counsel, should be imposed upon the ship.

The decree of the District Court will be so modified, and as modified affirmed.

Mr. Justice McKenna dissented on the ground that the evidence justified condemnation. — (Scott, *Cases on International Law*, pp. 835–844.)

10. Judgment of Sir William Scott in the Case of the *Jonge Margaretha*

The Doctrine of Conditional Contraband and its Application to Provisions

Sir W. Scott. There is little reason to doubt the property in this case, and therefore passing over the observations which have been made on that part of the subject, I shall confine myself to the single question, Is this a legal transaction in a

neutral, being the transaction of a Papenberg ship carrying Dutch cheeses from Amsterdam to Brest or Morlaix (it is said) but certainly to Brest; or as it may be otherwise described, the transaction of a neutral carrying a cargo of provisions, not the product and manufacture of his own country, but of the enemy's ally in the war — of provisions which are a capital ship's store — and to the great port of naval equipment of the enemy?

If I adverted to the state of Brest at this time, it might be no unfair addition to the terms of the description, if I noticed, what was notorious to all Europe at this time, that there was in that port a considerable French fleet in a state of preparation for sallying forth on a hostile expedition; its motions at that time watched with great anxiety by a British fleet which lay off the harbour for the purpose of defeating its designs. Is the carriage of such a supply, to such a place, and on such an occasion a traffic so purely neutral, as to subject the neutral trader to no inconvenience?

If it could be laid down as a general position, in the manner in which it has been argued, that cheese, being a provision, is universally contraband, the question would be readily answered; but the court lays down no such position. The catalogue of contraband has varied very much, and sometimes in such a manner as to make it very difficult to assign the reason of the variations; owing to particular circumstances, the history of which has not accompanied the history of the decisions. In 1673, when many unwarrantable rules were laid down by public authority respecting contraband, it was expressly asserted by Sir R. Wiseman, the then King's Advocate, upon a formal reference made to him, that by the English Admiralty, corn, wine, and oil, were liable to be deemed contraband. "I do agree," says he, reprobating the regulations that had been published, and observing that rules are not to be so hardly laid down as to press upon neutrals, "that corn, wine, and oil, will be deemed contraband."

These articles of provisions then were at that time confiscable, according to the judgment of a person of great knowledge and experience in the practice of this court. In much later

times many other sorts of provisions have been condemned as contraband. In 1747, in *The Jonge Andreas*, butter, going to Rochelle, was condemned; how it happened that cheese at the same time was more favourably considered according to the case cited by Dr. Swabey, I don't exactly know; the distinction appears nice; in all probability the cheeses were not of the species which is intended for ship's use. Salted cod and salmon were condemned in *The Jonge Frederick*, going to Rochelle, in the same year. In 1748, in *The Joannes*, rice and salted herrings were condemned as contraband. These instances show that articles of human food have been so considered, at least where it was probable that they were intended for naval or military use.

I am aware of the favourable positions laid down upon this matter by Wolfius and Vattel, and other writers of the continent, although Vattel expressly admits that provisions may, under circumstances, be treated as contraband. And I take the modern established rule to be this, that generally they are not contraband, but may become so under circumstances arising out of the particular situation of the war, or the condition of the parties engaged in it. The court must therefore look to the circumstances under which the supply was sent.

Among the circumstances which tend to preserve provisions from being liable to be treated as contraband, one is, that they are of the growth of the country which exports them. In the present case, they are the product of another country, and that a hostile country; and the claimant has not only gone out of his way for the supply of the enemy, but he has assisted the enemy's ally in the war by taking off his surplus commodities.

Another circumstance to which some indulgence, by the practice of nations is shown, is, when the articles are in their native and unmanufactured state. Thus iron is treated with indulgence, though anchors and other instruments fabricated out of it are directly contraband. Hemp is more favourably considered than cordage; and wheat is not considered as so noxious a commodity as any of the final preparations of it for human use. In the present case, the article falls under this

unfavourable consideration, being a manufacture prepared for immediate use.

But the most important distinction is, whether the articles were intended for the ordinary use of life, or even for mercantile ships' use; or whether they were going with a highly probable destination to military use? Of the matter of fact, on which the distinction is to be applied, the nature and quality of the port to which the articles were going, is not an irrational test; if the port is a general commercial port, it shall be understood that the articles were going for civil use, although occasionally a frigate or other ships of war, may be constructed in that port. Contra, if the great predominant character of a port be that of a port of naval military equipment, it shall be intended that the articles were going for military use, although merchant ships resort to the same place, and although it is possible that the articles might have been applied to civil consumption; for it being impossible to ascertain the final use of an article *ancipitis usus*, it is not an injurious rule which deduces both ways the final use from the immediate destination; and the presumption of a hostile use, founded on its destination to a military port, is very much inflamed, if at the time when the articles were going, a considerable armament was notoriously preparing, to which a supply of those articles would be eminently useful.

In the case of *The Endraught*, cited for the claimant, the destination was to Bordeaux; and though smaller vessels of war may be occasionally built and fitted out there, it is by no means a port of naval military equipment in its principal occupation, in the same manner as Brest is universally known to be.

The court, however, was unwilling, in the present case, to conclude the claimant on the mere point of destination, it being alleged that the cheeses were not fit for naval use, but were merely luxuries for the use of domestic tables. It therefore permitted both parties to exhibit affidavits as to their nature and quality. The claimant has exhibited none; but here are authentic certificates from persons of integrity and knowledge, that they are exactly such cheeses as are used in British

ships, where foreign cheeses are used at all; and that they are exclusively used in French ships of war.

Attending to all these circumstances, I think myself warranted to pronounce these cheeses to be contraband, and condemn them as such. As, however, the party has acted without dissimulation in the case, and may have been misled by an inattention to circumstances, to which in strictness he ought to have adverted, as well as by something like an irregular indulgence on which he has relied; I shall content myself with pronouncing the cargo to be contraband, without enforcing the usual penalty of the confiscation of the ship belonging to the same proprietor. — (1, C. Rob., 189.)

11. The Declaration of London, 1909

Chapter I — Blockade in Time of War

Article 1

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Article 2

In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective — that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

Article 3

The question whether a blockade is effective is a question of fact.

Article 4

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

Article 5

A blockade must be applied impartially to the ships of all nations.

Article 6

The commander of a blockading force may give permission to a war-ship to enter, and subsequently to leave, a blockaded port.

Article 7

In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

Article 8

A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

Article 9

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

(1) The date when the blockade begins;

(2) The geographical limits of the coastline under blockade;

(3) The period within which neutral vessels may come out.

Article 10

If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9, (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

Article 11

A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it;

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform

the foreign consular officers at the port or on the coastline under blockade as soon as possible.

Article 12

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

Article 13

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

Article 14

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive of the blockade.

Article 15

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

Article 16

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

Article 17

Neutral vessels may not be captured for breach of blockade except within the area of operations of the war-ships detailed to render the blockade effective.

Article 18

The blockading forces must not bar access to neutral ports or coasts.

Article 19

Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

Article 20

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

Article 21

A vessel found guilty of breach of blockade is condemned. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

Chapter II — Contraband of War

Article 22

The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband: —

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives especially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) War-ships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

Article 23

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

Article 24

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband: —

(1) Foodstuffs.

(2) Forage and grain, suitable for feeding animals.

(3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.

(4) Gold and silver in coin or bullion; paper money.

(5) Vehicles of all kinds available for use in war, and their component parts.

(6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.

(7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.

(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.

(9) Fuel; lubricants.

(10 Powder and explosives not specially prepared for use in war.

(11) Barbed wire and implements for fixing and cutting the same.

(12) Horseshoes and shoeing materials.

(13) Harness and saddlery.

(14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

Article 25

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

Article 26

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

Article 27

Articles which are not susceptible of use in war may not be declared contraband of war.

Article 28

The following may not be declared contraband of war: —

(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts; copra.

(3) Rubber, resins, gums, and lacs; hops.

(4) Raw hides and horns, bones, and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.

(8) Chinaware and glass.

(9) Paper and paper-making materials.

(10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.

(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

(12) Agricultural, mining, textile, and printing machinery.

(13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.

(14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs, and bristles.

(17) Articles of household furniture and decoration; office furniture and requisites.

Article 29

Likewise the following may not be treated as contraband of war: —

(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

Article 30

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transhipment or a subsequent transport by land.

Article 31

Proof of the destination specified in Article 30 is complete in the following cases: —

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

Article 32

When a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

Article 33

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

Article 34

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy.

A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

Article 35

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

Article 36

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

Article 37

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

Article 38

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

Article 39

Contraband goods are liable to condemnation.

Article 40

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

Article 41

If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

Article 42

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

Article 43

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs at the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

Article 44

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

Chapter III — Unneutral Service

Article 45

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband: —

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interests of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the power to which

such port belongs, provided that such notification was made in sufficient time.

Article 46

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

(1) If she takes a direct part in the hostilities;

(2) If she is under the orders or control of an agent placed on board by the enemy Government;

(3) If she is in the exclusive employment of the enemy Government;

(4) If she is exclusively engaged at the time either to the transport of enemy troops or to the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

Article 47

Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

Chapter IV — Destruction of Neutral Prizes

Article 48

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

Article 49

As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

Article 50

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

Article 51

A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

Article 52

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

Article 53

If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

Article 54

The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the

formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

Chapter V — Transfer to a Neutral Flag

Article 55

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

Article 56

The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void: —

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

Chapter VI — Enemy Character

Article 57

Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

Article 58

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

Article 59

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

Article 60

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

Chapter VII — Convoy

Article 61

Neutral vessels under convoy of war-ships of their own nationality, are exempt from search. The commander of a convoy

gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes which could be obtained by search.

Article 62

If the commander of the belligerent war-ship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

Chapter VIII — Resistance to Search

Article 63

Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

Chapter IX — Compensation

Article 64

If the capture of a vessel or of goods, is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

Final Provisions

Article 65

The provisions of the present Declaration must be treated as a whole, and cannot be separated.

Article 66

The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

Article 67

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

Article 68

The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

Article 69

In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

Article 70

The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

Article 71

The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done in London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

Note. — The Powers represented at the Naval Conference of London were Great Britain, the convener of the Conference, and Germany, the United States of America, Austria-Hungary, Spain, France, Italy, Japan, Holland, and Russia. They all signed the Declaration of London, which was the fruit of the labours of their representatives, and all looked forward to its early ratification. But a strong agitation against the Declaration, and especially that part of it which refers to Contraband of War, arose in England. The matter became largely a party question. The House of Lords threw out the Naval Prize Bill, which, had it passed, would have enabled the Government to join with other Powers in setting up the International Prize Court of Appeal provided for by the Hague Conference of 1907. Without the Bill the Prize Court was impossible, and without the Prize Court to administer the rules contained in the Declaration, the Declaration itself was incomplete and possibly dangerous. Accordingly it still awaits ratification. But a strong disposition has been shewn to regard its provisions as International Law, though they still lack the authority that only the formal consent of the nations can give. It is to be hoped that the next Hague Conference will embody in Conventions accepted by all the Powers a new and improved edition of the Declaration.

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